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ABSTRACT

Neighborhood Justice Centers, as defined by the American Bar Association Report of the Pound Conference Follow-up Task Force, are facilities--designed to make available a variety of methods of processing disputes, including arbitration, mediation, referral to small claims courts as well as referral to courts of general jurisdiction. The purpose of this report is to review selected dispute processing projects which are currently in operation, and provide recommendations for Neighborhood Justice Center models which are appropriate for experimental implementation. Six projects were selected for intensive review. Information in the report is based on site visits, descriptive materials provided by project directors and responses to a project survey. The study includes detailed reports on the history, organization and functioning of these six projects. No attempt is made to recommend a single, unitary model for Neighborhood Justice Centers since what is appropriate for one locality may not be suitable for another. Instead there is a presentation of the major issues which need to be considered in developing one of these centers. (Author/DOW)

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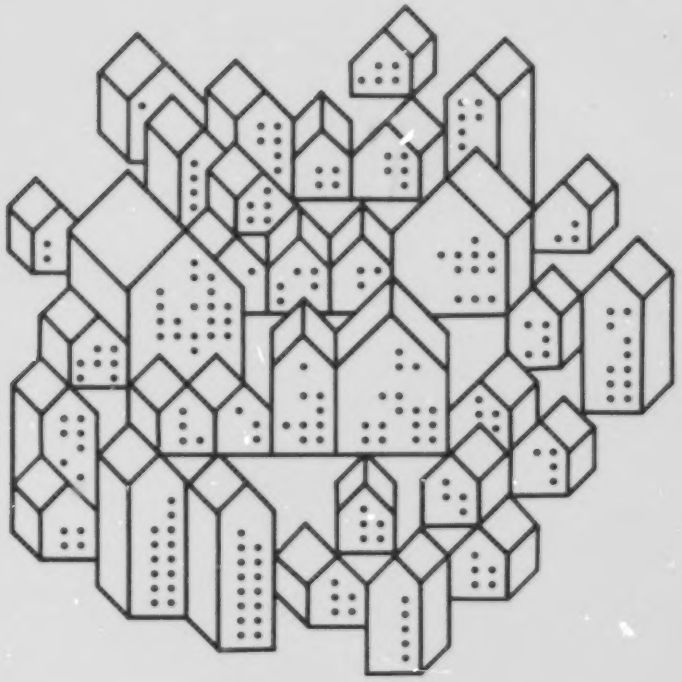

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Program Models are a synthesis of research and evaluation findings, operational experience, and expert opinion in a criminal justice topic area. Each report presents a series of programmatic options and analyzes the advantages and disadvantages of each. The intent is to provide criminal justice administrators with the capability to make informed choices in planning, implementing, and improving efforts in a program area. The Models may also serve as the basis for LEAA testing and demonstration efforts.

The following individuals provided information and assistance in the conduct of this study

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Neighborhood Justice Centers

An Analysis of Potential Models

by

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FOREWORD

Throughout the United States there is increasing concern over the way in which justice is delivered to the people. This is particularly so with respect to the responsiveness of those institutions charged with resolving, or assisting in the resolution of, disputes that arise in the course of daily life. While such matters may, individually, be of relatively small magnitude, taken collectively they are of enormous social consequence. It is essential that we provide mechanisms through which such disputes can be effectively resolved if we are to maintain the civility of our society.

There seems to be a rediscovery every generation that our courts are having difficulties in resolving efficiently and effectively the serious cases that are brought before them, particularly on the criminal side. It is only more recently that there has developed an equivalent concern for relatively minor matters. This would appear to be the product of the social changes that have accompanied the evolution of our contemporary urban and suburban society.

While the resolution of more serious matters has long been the province of the courts, minor disputes have traditionally had other avenues through which they could be settled. For example, the justice of the peace, the school, the church, the extended family group, the politician, and the policeman on the beat all assisted in the resolution of minor disputes. The influence of these groups upon dispute resolution is fading from the American scene. Many of the problems they dealt with remain, however, and are left without effective forums through which their resolution may be sought.

In response to this problem, the Department of Justice has developed a Neighborhood Justice Center program. This program is establishing three experimental Neighborhood Justice Centers in different cities around the country. We hope to develop a model that may be replicated around the country. An independent evaluation of the three Centers is being conducted separately.

This report was commissioned in order that the Department could have up-to-date information on several of the best programs of a similar nature that were already underway. It presents an overview of the various minor dispute processing mechanisms in use in the United States. Detailed case studies of six currently operating programs that are similar to the Department's Neighborhood Justice Centers are included, as well as recommendations for designing and implementing Neighborhood Justice Center projects.

The report has been a valuable resource in the development of the Department's Neighborhood Justice Center program. I hope that it will also be of value to state and local governments and others in considering and developing similar programs.

Griffin B. Bell

Griffin B. Bell
Attorney General

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PREFACE

Neighborhood Justice Centers, as defined by the American Bar Association Report of the Pound Conference Follow-up Task Force, are "facilities... designed to make available a variety of methods of processing disputes, including arbitration, mediation, referral to small claims courts as well as referral to courts of general jurisdiction."[1] The purpose of this report is to review selected dispute processing projects which are currently in operation, and provide recommendations for Neighborhood Justice Center models which are appropriate for experimental implementation.

A number of projects have been developed in recent years which are similar in many respects to the broad definition of Neighborhood Justice Centers. These projects provide a forum for the resolution of minor disputes, as an alternative to arrest or formal court action. In addition to arbitration, mediation, and referral to the courts, the projects often employ social work staff, make referrals to social service agencies, and conduct fact-finding and related functions. Virtually all of these projects are of very recent origin. The Columbus Night Prosecutor Program, the forebear of many of the current projects, was only established in 1971. Similarly, the pioneering work of the American Arbitration Association and the Institute for Mediation and Conflict Resolution in applying labor-management conflict resolution techniques to citizen dispute resolution is a recent innovation.

A sample of dispute processing projects was selected which spanned the range of resolution techniques, referral sources, organizational affiliations, and mediation staff characteristics. These projects were studied in detail to provide a basis for making recommendations regarding Neighborhood Justice Center models. Project selection was based on a review of the characteristics of a variety of projects across the country and discussions with leaders in the field of dispute resolution regarding the range of projects which might represent the currently available models.

Professor Frank Sander of Harvard Law School and the ABA Committee on Minor Dispute Resolution was particularly helpful in providing relevant materials and identifying the major issues relating to Neighborhood Justice Centers. Other individuals who were consulted include John Cratsley of Harvard Law School, Fred Delappa of the ABA Committee on Minor Dispute Resolution, William Felstiner of the University of Southern California Program for the Study of Dispute Resolution Policy, George Nicolau, Vice President of the Institute for Mediation and Conflict Resolution, Joseph Stulberg, Vice President of the American Arbitration Association, and Paul Wahrhaftig of the Pennsylvania Pretrial Justice Program. The directors and staffs of the various projects which were visited also provided many insightful and thought-provoking observations regarding the options for Neighborhood Justice Centers. Mary Ann Beck served as the National Institute of Law Enforcement and Criminal Justice project monitor and provided invaluable suggestions and assistance throughout the course of the study.

The six projects selected for intensive review were:

A. The Boston Urban Court Project;

B. The Columbus Night Prosecutor Program;

C. The Miami Citizen Dispute Settlement Program;

D. The New York Institute for Mediation and Conflict Resolution Dispute Center;

E. The Rochester American Arbitration Association Community Dispute Services Project;

F. The San Francisco Community Board Program.

All of the projects were visited during May of 1977 except for the San Francisco project which is still in the developmental phase and has not begun to process cases. Prior to project site visits, descriptive materials regarding the projects were requested from the project directors. Materials received included grant proposals, annual and quarterly reports, evaluative studies, media accounts of the projects' achievements, and concept papers. A project survey instrument was developed which included questions regarding the nature and size of the community; project start-up including questions on initial development, grant processing, and early implementation; case criteria; referral sources; resolution techniques; hearing staff qualifications; follow-up procedures; project organization; staff training; costs; evaluation; and general recommenda-

tions of the project regarding models for Neighborhood Justice Centers. A copy of the survey instrument is presented in Appendix A.

During the site visits, efforts were made to observe the various components of the project in operation. In many cases representatives of the projects' referral sources were interviewed, visits were made to the local courts, prosecutors' offices, etc., to observe intake and screening practices, and, where permissible, mediation hearings were observed. Project Directors and relevant staff members were interviewed at each project, and past Project Directors were contacted if they had recently been replaced by the current Project Director. In the case of the San Francisco project, the Project Director was interviewed during a site visit to the East Coast, and project materials were reviewed.

Organization of this Report

This report is divided into three sections. Chapter 1 provides an overview of available dispute processing mechanisms, and highlights major recommendations for the improvement of American dispute processing.

Chapter 2 provides a discussion of the major issues which need to be considered in developing a Neighborhood Justice Center. Twelve major aspects of the structure and functioning of these Centers are reviewed. The advantages and disadvantages of different program components are discussed. The aim of Chapter 2 is to identify the major dimensions on which Neighborhood Justice Centers may differ, to provide concrete examples, where possible, of projects incorporating the specific features under discussion, and to analyze the implications of implementing specific project components or arrays of components. No attempt is made to recommend a single, unitary model for Neighborhood Justice Centers. The Pound Conference Follow-up Task Force Report notes the inappropriateness of developing a universal model, and states "we do not intend to describe a specific model; indeed, what is appropriate for one locality may not be suitable for another."[2] The intent of Chapter 2, then, is to assist communities in making informed choices in planning and implementing a Neighborhood Justice Center that will meet local needs.

Chapter 3 contains detailed reports on the history, organization, and functioning of the six projects which were studied. In each case, Project Directors have had the opportunity to review and comment on drafts of the program descriptions to insure their accuracy and comprehensiveness. Information on additional projects was gathered through phone conversations with project staff and a review of relevant literature dealing with dispute processing mechanisms.

CHAPTER 1
ALTERNATIVE APPROACHES TO NEIGHBORHOOD JUSTICE

Every society develops mechanisms to deal with the disputes which inevitably arise among its members. These mechanisms range from the informal community hearings common in African societies in which relatives and neighbors discuss disputes before a local mediator,[3] to the highly formal adjudicatory forums common in many industrialized societies.[4] Within any given society a typical citizen engaged in a dispute often has many options. The citizen can attempt to avoid the dispute (e.g., by eliminating contacts with the other disputant), negotiate the matter directly with the disputant in an attempt to arrive at an acceptable resolution, have the dispute mediated by a third party either formally or informally, bring the matter to the attention of a fact-finder or ombudsman if available (e.g., newspaper action lines), or take the matter to court.[5]

Societies vary greatly in their patterns of use of the various available dispute resolution techniques. Citizens of the United States tend to rely heavily upon the formal court processing of disputes. Johnson et al. (1977) estimate that approximately ten million new civil cases are initiated each year in American courts.[6] In comparison, Sarat and Grossman (1975) have reported very low civil litigation rates in many other countries (e.g., 307 per 100,000 population in Norway, 493 per 100,000 population in Finland, etc., as opposed to the Johnson et al. (1977) estimate of approximately 5,000 per 100,000 population in the U.S.).[7] In addition to the civil cases cited above, millions of criminal complaints are initiated each year in the U.S.[8]

Countries which do not rely heavily on the courts for dispute settlement tend to have well developed alternative procedures. Some societies have very strong traditions supporting the resolution of disputes within family and neighborhood groups. For example,

Cohen (1966) has noted that in China "most civil disputes between the individuals are settled by extrajudicial mediation" involving the efforts of local individuals.[9] A number of European countries have developed formal nonjudicial mechanisms for the rapid processing of disputes.[10]

1.1 Current Problems in American Dispute Processing

The heavy U.S. reliance on the courts for the resolution of disputes and concommitant difficulties experienced by the courts in handling their large caseloads has resulted in an extensive reexamination of the appropriate role of the courts in dispute processing. The courts' problems in case processing are strongly evidenced in the extreme delays typical in the processing of both criminal and civil cases. For example, personal injury cases take over four years to process in such cities as Boston, Chicago, New York (the Bronx) and Philadelphia,[11] and many criminal cases also require extended periods of time to process.

Discussions of court problems in dispute processing typically stress: (1) problems of delay such as those cited above, (2) limited access to the courts due to the high costs resulting from legal fees, lost wages while attending court sessions, court fees, etc., (3) inefficiency due to high dismissal rates (e.g., over 40% of cases involving felony charges were dismissed in the New York courts in 1971). This inefficiency results in high costs to society for the partial processing of cases, and (4) logical limitations in the use of adjudication due to the fact that many matters involve reciprocal offenses between the parties, or complex issues requiring compromises not readily achieved by the winner takes all approach of adjudication.[12]

A recent study of criminal court processing in New York by the Vera Institute of Justice titled Felony Arrests: Their Prosecution and Disposition in New York City's Courts highlights how many of these problems interact in the criminal courts. The authors point out:

> Because our society has not found adequate alternatives to arrest and adjudication for coping with interpersonal anger publicly expressed, we pay a price. The price includes large court caseloads, long delays in processing and, ultimately, high dismissal rates. These impose high financial costs on taxpayers and high personal costs on defendants and their families. The public pays in another way, too. The congestion and drain on resources caused by an excessive number of such cases in the courts weakens the ability of the criminal justice system to deal quickly and decisively with the "real" felons, who may be getting lost in the shuffle. The risk that they will be returned to the street increases, as does the danger to law-abiding citizens on whom they prey.[13]

The Vera researchers note that in 56% of all felony arrests for crimes against the person, the victim had a prior relationship with the defendant.[14] Eighty-seven percent of these cases in turn resulted in dismissals due to complainant noncooperation with the prosecution compared to only 29% of the cases involving strangers. Complainants in such cases are simply not interested in having the defendant prosecuted once they have cooled off, and the Vera report strongly recommends the use of neighborhood justice centers rather than the courts to process the vast majority of prior relationship cases.

Many groups have joined in the debate regarding the court's role in dispute processing. The American Bar Association is investigating alternatives to current dispute resolution techniques and has established a Committee on the Resolution of Minor Disputes. This committee is extending the proposals of the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (the Pound Conference) which was co-sponsored by the ABA, the Judicial Conference of the United States and the Conference of Chief Justices. Among the issues being promoted by the ABA are the development of Neighborhood Justice Centers, revitalization of small claims courts, and the increased use of compulsory arbitration in the processing of disputes. The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice chaired by Robert Kastenmeier has recently held hearings to explore new proposals for the courts. The U.S. Department of Justice has developed an Office for Improvements in the Administration of Justice which has as its mandate the development of new

alternative procedures to court processing as well as the improvement of current mechanisms. And the National Institute of Law Enforcement and Criminal Justice has funded several recent research studies on alternative dispute resolution mechanisms.

Chief Justice Burger has aptly summarized the spirit of the current reappraisal of the courts in noting, "It is time, therefore, to ask ourselves whether the tools of procedure, the methods of judicial process that developed slowly through the evolution of common law, and were fitted to a rural, agrarian society, are entirely suited, without change, to the complex modern society of the late 20th and the 21st centuries."[15]

1.2 Overview of Dispute Processing Options

Societies tend to differ in their patterns of use of various dispute processing mechanisms. As was noted above, some societies rely heavily upon the formal adjudication of disputes while others strongly prefer informal negotiated or mediated settlements of disputes. Despite differences in preferences among the dispute processing mechanisms, virtually all societies provide their citizens with a range of options for action when confronted with a dispute.[16] This section provides a brief survey of the dispute processing options available in the United States.

Table 1.1 presents a summary of the range of U.S. dispute processing mechanisms. The options are divided into three primary categories: (1) unilateral actions on the part of a disputant, (2) dyadic options in which the two disputants confront one another,[17] and (3) third party resolution techniques. Categories (1) and (2) present options which are under the control of the disputants themselves and thus are available to all disputants in the country. The options in category (3) vary in their availability across the various jurisdictions in the country. While individuals in all jurisdictions can resort to adjudication due to its constitutionally mandated universal availability, no single jurisdiction is likely to provide all of the various mediation and arbitration options listed under the third party interventions. Each dispute processing option will be discussed briefly in turn. Relevant projects and research literature will be discussed, and this section will be followed by a discussion of the way in which many of the dispute

TABLE 1.1.

Dispute Processing Options

I. **UNILATERAL ACTIONS ON THE PART OF A DISPUTANT**

- A. **Inaction**
- B. **Active Avoidance (move, terminate relationship, etc.)**
- C. **Self-Help**
  1. Redefinition of the problem
  2. Elimination of the deficit
  3. Use of social service agencies and other assistance

II. **DYADIC OPTIONS–CONTACTS BETWEEN THE DISPUTING PARTIES**

- A. **Coercion (threats and use of force)**
- B. **Negotiation**

III. **THIRD PARTY RESOLUTION TECHNIQUES**

- A. **Conciliation (bringing parties together for negotiation)**
- B. **Mediation (structured communication, recommendations)**
  1. General mediational projects
  2. Projects mediating limited disputes for the general public
  3. Projects mediating general disputes for a limited segment of the population
  4. Projects mediating a limited range of disputes for an institutional population
- C. **Arbitration**
  1. General arbitration projects
  2. Arbitration of small claims matters
  3. Consumer arbitration projects
  4. Contractually based arbitration
- D. **Fact-Finding**
  1. Media action lines
  2. Trade association projects
  3. Government ombudsmen
- E. **Administrative Procedures**
  1. Court oriented processing
  2. Informal court operated processing
  3. Routine administrative porcessing
  4. Measures reducing or eliminating the need for adjudication
  5. Measures simplifying adjudication
- F. **Adjudication**

processing mechanisms could be incorporated into a Neighborhood Justice Center.

1.3 Unilateral Actions on the Part of a Disputant

It is difficult to imagine any human relationship which would remain free of disputes among the participants over an extended period of time. Given inevitable limited resources in time, material objects, etc., and the tendency of individuals to develop plans for the use of these resources, conflicts inevitably arise between individuals regarding whose plans should be enacted or whether agreed upon plans are being enacted appropriately. In the case of married couples, disputes are common over whose goals will prevail in the use of money, raising of children, leisure activities, etc. These disputes over such mundane matters can often escalate into highly emotional behavior including serious assaults. In consumer activities, disputes often arise regarding whether agreed upon plans have been carried out properly; for instance, whether the aluminum siding has been satisfactorily installed, or whether the purchased TV operates as intended. When a dispute arises, an individual always has the option of responding unilaterally with inaction, attempts at active avoidance, and self-help.

1.3.1 Inaction

The simplest response a disputant can make in the face of a dispute is inaction. As Galanter (1974) points out, "lumping it" may be caused by many factors including lack of information or access to means of redress or a decision that available means of dispute processing are too costly psychologically or monetarily to justify the potential gain. Inaction is common in both private and public life. In individual relationships a participant may perceive inequities and conflicts and yet not initiate an overt dispute due to dependency upon the other individual and the likelihood of incurring high personal costs if the dispute is joined. In public life official agencies often fail to act against a violator due to "limited resources, policies about de minimus, schedules of priorities, and so forth.[18] Felstiner (1974) points out that complaints by individuals against large organizations such as

retail stores and insurance companies are often "lumped" because the average individual is not able to muster credible incentives for the organization to respond to the grievance. Interaction between the individual and the organization continues because of the individual's dependence upon the particular organization.

1.3.2 Active Avoidance

Active avoidance is similar to inaction in that steps to resolve the past dispute are not taken. The individual does make an effort to avoid future disputes with the other party, however, by withdrawing from the relationship. The decision to withdraw from the relationship is determined by the individual's judgment of the costs of the withdrawal relative to the availability of other comparable relationships. Felstiner (1974) makes the interesting point that withdrawal may be relatively easy in relationships involving a single dimension (e.g., one's relationship with a casual acquaintance) and yet very difficult in "multiplex relationships" which may serve many interests.[19] In these more complex relationships, the dispute may only relate to one interest and yet withdrawal affects all of the interests. An extreme example of this type of relationship is the cultural stereotype of the highly dependent and submissive housewife who suffers many injustices from her husband and yet chooses inaction rather than active avoidance of the relationship due to the many needs fulfilled by the relationship (shelter, assistance in child rearing, etc.).

Felstiner (1974) notes that the use of avoidance as a response to disputes is common in "technically complex rich societies" because many relationships tend to be unidimensional and adequate substitute relationships are readily available. Individuals quit jobs after disputes with employers, or cease contacts with merchants with whom conflicts arise. Felstiner (1974) suggests that such responses are often acceptable in technically complex rich societies but very difficult in technically simple, poor societies in which complex interdependencies are common. Danzig and Lowy (1975) have strongly criticized Felstiner's positive appraisal of avoidance as a response to disputes, citing the high personal and societal costs arising from such a tactic.

1.3.3 Self-Help

In some instances disputants may be able unilaterally to resolve the dispute to their satisfaction by their own efforts. A number of self-help strategies are available.

Redefinition of the problem. One means of virtually eliminating the basis for a dispute is for a disputant to redefine the problem out of existence. For example, a driver who feels that another driver took a parking space that was rightfully his because he had been waiting for a space longer might decide that the rule of first come first served did not apply in this instance because the other driver was very old and should not have to walk far. This redefinition of the appropriate norms eliminates the basis for the dispute. Similarly, many potential disputes are eliminated because disputants decide that they had misperceived the offensive behavior, the behavior was accidental, the circumstances leading to the offense would never recur, they themselves were partially to blame for the offense, etc. Perceptual resolutions of disputes are similar to inaction in that the disputant does nothing overt to rectify the initially perceived problem. Redefinition differs from inaction in that the disputant does not suffer the discomfort of "lumping it" because there is nothing left to lump. If the redefinition of the dispute is self-deceptive and the offense is repeated and harms the disputant, the disputant has gained a short-term reduction in the discomfort of lumping it at the price of repeated future offenses. To the extent that faulty redefinitions of problems can result in a disputant failing to avoid the offender or attempting other resolution strategies, this form of unilateral action can be counterproductive. A substantial literature exists on the cognitive strategies individuals will use to reduce conflicts (e.g., see Festinger (1957), Brehm and Cohen (1962)). These redefinitions are not necessarily all or nothing processes, and an individual may redefine a problem to the point where action does not seem necessary and yet still feel that he is at least somewhat "lumping" the offense.

Elimination of the deficit. An alternative self-help strategy is to attempt to eliminate the deficit caused by the offense through direct effort. For example, a teenager might feel that he and his parents had agreed that he would receive a bicycle at a given age. If the parents decide not to give the boy the bicycle when the time arrives, the boy could decide not to "lump it" or redefine the situation (deciding a promise really had not been made) but

instead earn the money for a bicycle by cutting lawns or other similar work. The boy might still resent the parents, but the direct basis for the specific dispute would be eliminated when the boy purchased the bicycle with his own money. This option is not available when the disputant lacks the resources to attempt to rectify the deficit. Even when rectification is possible, the opportunity costs involved in attempting to eliminate the basis of the dispute may serve to maintain the injured party's anger.

Use of social service agencies and other outside assistance. This alternative is closely related to the above tactic but differs in that the disputant appeals to social service agencies or others in the attempt to resolve the dispute unilaterally. The agencies or others may recommend that the disputant redefine the dispute if the grievance does not seem well founded, assistance may be given in eliminating the deficit caused by the other disputant, avoidance of the relationship may be recommended, and the agency or others may help the disputant to use dyadic options and third party intervention tactics for the settlement of the dispute.

1.4 Dyadic Options—Contacts Between the Disputing Parties

Dyadic dispute processing techniques involve direct contacts between the disputing parties. Two major classes of options are available.

1.4.1 Coercion

Koch, Sodergren, and Campbell (1976) have defined coercion as the threat or use of force whereby "one principal imposes the outcome of a dispute and alone determines his concession, if any, to the opponent."[20] Koch et al. have discussed a number of cultures in which coercion appears to be the primary method of dispute resolution. The use of coercion presupposes that the disputant can credibly threaten or force the opponent into compliance. Many disputes escalate when one disputant unsuccessfully threatens the other disputant and in turn provokes a counter threat. This property of coercion makes it a particularly risky strategy, sowing the seeds of even greater disputes in the attempt to resolve the present dispute.

1.4.2 Negotiation

Negotiation involves an attempt by the two disputing parties to arrive at a settlement by means of discussion and bilateral agreement. The disputants communicate their perceptions of the disputed issue to one another and if possible develop a settlement to the dispute that is satisfactory to both parties. Compromises are the essence of negotiation and each party is expected to have an interest in arriving at a mutually acceptable resolution to the dispute. Galanter (1974) notes that negotiation is particularly likely to occur within relationships involving mutual dependence (e.g., husband-wife, purchaser-supplier, landlord-tenant, etc.) because "a capacity to sanction is built into the relationship."[21] Relationships among more independent entities (e.g., businesses in a given industry, casual acquaintances, etc.) tend to require the development of sanction systems operated by third parties because "the parties have little capacity to sanction the deviant directly."[22] Negotiated settlements can pave the way for common perceptions of a given situation and hopefully forestall future disputes. This property tends to make negotiation superior to the various unilateral dispute processing options cited earlier.

1.5 Third Party Resolution Techniques

Third party intervention strategies vary widely from techniques in which the third party simply attempts to facilitate communication to highly structured formal procedures in which the third party is vested with authority by the state to impose a binding resolution upon the parties to the dispute. Six major classes of third party interventions will be discussed.

1.5.1 Conciliation

Conciliation involves a very limited role for the third party whereby the party simple attempts to encourage negotiation among the disputing parties. This encouragement can involve the conciliator serving as a "go-between" in communications among the parties, providing a place for the negotiations to take place, etc. Conciliation in its pure form is likely to be relatively rare, because

conciliators are often likely to be asked for advice on settlement of the dispute or to offer advice spontaneously. This form of active assistance in structuring the communication or offering recommended settlements results in the conciliator becoming a mediator. Because of the close gradation between conciliation and mediation, many scholars (e.g., Sander (1976); Galanter (1974)) have chosen to treat conciliation and mediation as roughly interchangeable tactics. The two processes are discussed separately here because it is likely that at least in close knit groups (families, clubs, etc.) a substantial amount of pure conciliation still occurs. An individual who is close to both parties to the dispute may not wish to risk alienating either party by becoming actively involved in the dispute and yet may work hard to ensure that negotiations occur. This facilitative role provides an interesting intermediate conflict resolution tactic between negotiation and mediation.

1.5.2 Mediation

Mediation involves the active participation of the third party in the processing of a dispute. This participation can range from minor involvement in which an individual who is essentially a conciliator offers some advice to the disputants regarding a possible resolution to highly structured interaction with the disputants. Some organizations which attempt to mediate disputes adhere to detailed procedures whereby the two parties meet together and discuss their perceptions in turn, then leave the room while the mediators formulate a plan for further mediation, then return to the room separately to discuss the issues in individual caucuses, and finally meet together again, hopefully to achieve a resolution of the matter at hand. By definition, mediators do not have the power to compel a resolution, but must rely upon the mutual agreement of the disputants.

Numerous projects have been developed across the country which provide mediational services to disputants. Some of these projects serve a broad spectrum of the population and mediate a wide range of matters; others serve a similar range of people but limit themselves to highly specific disputes (consumer projects, warranty programs); still others provide services to a limited spectrum of the population but on a wide range of matters (e.g., Chinese and Jewish community mediation boards); and some projects serve both a small group of people and deal with only a limited range of issues

(e.g., institutional grievance programs). A sample of mediational projects will be discussed briefly to provide an indication of the variety of ways in which mediation is conducted in the United States.

General mediational projects. These projects are characterized by their availability to a broad spectrum of the population and their willingness to mediate a wide range of types of disputes. Four of the projects studied as part of the research for this monograph fall into this category. Case studies of the Boston Urban Court Project, the Columbus Night Prosecutor Program, the Miami Citizen Dispute Settlement Project, and the San Francisco Community Board Program are presented in section three of this report. Each of these projects mediates disputes among citizens in their respective jurisdictions. Table 2.1 on pages 38 to 43 indicates the major features of these and other projects. All of these projects process both criminal and civil disputes, although criminal disputes tend to dominate the caseloads of the projects. Typical matters include harassment, minor assaults, and various neighborhood disagreements. The characteristics of the projects are discussed in detail in Chapters 2 and 3. All of the projects schedule mediational hearings quickly after initial contact with the complainant (typically within one week). Boston and San Francisco have representative citizens serve as mediators and the citizens hear the dispute as a panel. The Columbus project employs local law students as mediators, and these students hear cases individually, as do the professional mediators employed by the Miami project. Mediators attempt to arrive at a written agreement in all of the projects except the Columbus program, and all of the projects recontact the disputants after the hearing is completed to determine if the agreements are being maintained.

Additional mediational projects are located in a number of cities and tend to be modeled after the Columbus Night Prosecutor Program. These additional mediation projects are discussed briefly in the case studies cited earlier.

Projects mediating limited disputes for the general public. These projects mediate only limited and highly defined classes of disputes but provide their services to the general public. Consumer dispute projects are the major example of this type of project. For example, the Fairfax County, Virginia Consumer Protection Commission and the County Chamber of Commerce have jointly developed

an extensive business/consumer code of ethics. All businesses having membership in the Chamber of Commerce have agreed to submit disputes to mediation by an objective third party if the dispute cannot be resolved by more informal methods.[23] Johnson et al. (1977) provide a detailed description of a similar project in Illinois. Eighteen percent of the disputes in the Illinois project proceed to mediational hearings while the remaining disputes are closed or dropped after initial analysis by the consumer protection project or after a letter is sent to the merchant informing him of the complaint. Many Better Business Bureaus have developed complaint processing procedures for consumer disputes that involve: (1) initial written notification of the merchant of the complaint which was filed, (2) mediation if the complaint is not resolved informally, and (3) arbitration if necessary. The mediation phase may involve a joint meeting between the disputing parties or simply individual meetings with the two parties in an attempt to serve as a "go-between." This latter function can be considered to be conciliation if the Better Business Bureau mediator simply serves to facilitate communication without structuring the communications or making recommendations for a resolution. The various consumer projects discussed above all mediate a wide range of types of consumer disputes. Some other consumer mediation projects are limited to more restrictive classes of disputes. For example, the National Association of Home Builders has established the Homeowner's Warranty Corporation which uses a three-step method of dispute processing similar to that described for many Better Business Bureaus. The Magnuson-Moss Warranty Act has encouraged the development of this type of dispute processing program to enforce product warranties and has designated the Federal Trade Commission as the agency to facilitate the resolution of warranty disputes. The Homeowner's Warranty Corporation is currently considering using the services of the Miami Citizen Dispute Settlement Project to conduct the mediational phase of their dispute processing procedure in Miami. This is an interesting proposal because it would enable the limited project to maintain its autonomy and yet use the services of the local, general mediational project.

Projects mediating general disputes for a limited segment of the population. A number of ethnic groups have developed relatively elaborate dispute processing mechanisms for their members. Yaffe (1972) has provided a detailed description of the Jewish Conciliation Board in New York City. Members of the Jewish community can present disputes to a panel made up of a lawyer, a rabbi, and a businessman (defined broadly to include a community member). Close to 1,000 cases are brought to the New York board every year. Most

are settled informally through discussions with the program's executive director and only six percent proceed to formal hearings. Yaffe (1972) indicates that disputes typically involve marital business, and family matters, as well as religious issues. The conciliation board is structured to save the participants time and money, avoid publicizing messy interpersonal disputes in civil proceedings, and also provides a forum for dealing with matters of special religious concern. Balderman (1974) has conducted a study of the Jewish courts in Los Angeles and has found that the Los Angeles courts are rarely used as an alternative to the civil courts. Balderman (1974) notes that the Jewish courts are effective in disputes between disputants who are active members of the Jewish community because of the possibilities for community coercion of the parties, but are less effective if the disputants are relatively independent of the community.

The Chinese community has also commonly developed dispute processing mechanisms. Doo (1973) conducted a study of Chinese-American communities and has described the mediational techniques used in Chinese communities to resolve disputes. As in the case of the processing of active members of the Jewish community by the Jewish Conciliation Board, the Chinese community can often exert considerable control over its members by threatening noncomplying community members with virtual ostracism from the community.

Projects mediating a limited range of disputes for an institutional population. A number of projects have been developed within institutions which provide for the mediation of disputes among members of the institutions. For example, universities often have disciplinary boards which can mediate disputes. Fisher (1975) has described the operations of the Boston University student courts. The University has a university-wide hearing procedure and more informal programs have been developed in several of the university's large dormitories. The university code specifies the types of matters that can be brought before the boards (e.g., damage to university property, threatening community members, etc.). The boards attempt to resolve the problems but have the additional power to impose sanctions as serious as permanent expulsion from the university. In instances in which the offense is against the university rather than a community member and sanctions are invoked the board acts as an adjudicator rather than a mediator, and this function is more common than mediation.

Correctional institutions have begun to develop mediation procedures to resolve disputes among inmates and between inmates and staff. The California Youth Authority has developed an elaborate grievance procedure involving institutional based hearings, supervisory review and even nonbinding external arbitration if necessary. The grievance procedure is rarely used by inmates for hearing disputes against other inmates or staff although the procedure is thought to have encouraged the informal mediation of disputes which would have otherwise been referred to the grievance procedure. Most disputes tend to deal with the individual application of otherwise uncontested institutional policies or policies themselves.[24]

The San Francisco Community Board Program is currently developing a dispute processing project in a local San Francisco community comprised primarily of a large housing project. This program is somewhat similar to the university and correctional projects in that a highly circumscribed population is being served, but the project will be structured to mediate a wide range of civil and criminal matters, rather than the more limited matters typically mediated in the university and correctional projects.

Institutionally based mediation projects would seem to have great promise because of the possibility for the participation of immediate peers in the settlement of the dispute.

1.5.3 Arbitration

In contrast to mediation, arbitration involves a third party decision regarding the matter in dispute. The decision is typically backed by sanctions and is thus termed "binding" arbitration, although "nonbinding" arbitration in which the arbitrator's decision is merely advisory also occurs in some settings. As was noted in the preceding section, some dispute processing procedures treat arbitration as the method of last resort and precede arbitration efforts with informal resolution attempts and mediation hearings (e.g., see the various consumer dispute projects). Other projects which limit themselves to arbitration hearings incorporate mediation as the initial phase of the hearings. An attempt is made to have the disputants develop an agreement which can be converted into a binding arbitrator's award for the purposes of enforcement. If the mediation attempt fails, then the arbitrator is empowered

to render a binding decision which imposes conditions upon the disputing parties. This practice of combining mediation and arbitration within a single hearing has been criticized by a number of researchers (e.g., Fuller (1963), Sander (1976)). The mediation attempt may be severely hampered by the participants' knowledge that the hearing officer will be able to impose an arbitration agreement upon the parties, and parties may be hesitant to divulge relevant information to the hearing officer which might be harmful later when the arbitration decision is made.

Disputants may become involved in arbitration through a number of means, including voluntary submission to arbitration, contractual agreement that all relevant disputes will be processed by arbitration, and compulsory arbitration as an adjunct to the courts. Numerous types of arbitration projects have been developed. Some of the projects are similar to the general mediational projects discussed earlier--processing a wide range of disputes for the general public--but using arbitration rather than mediation. Participation in these programs is voluntary. Other projects are attached to small claims courts and either request or compel civil disputants with claims within a given range to submit their disputes to arbitration. Many of the consumer projects discussed earlier employ arbitration as a last resort procedure, with participation generally being voluntary for the consumer and highly recommended or compelled for the merchant. Contractually based arbitration is common in business either as part of labor management disputes or as part of contractual agreements between business firms. A sample of arbitration projects will be briefly discussed to indicate the range of ways arbitration is used to process disputes in the United States.

General arbitration projects. The American Arbitration Association and the Institute for Mediation and Conflict Resolution have developed projects which provide services to the general public and arbitrate a wide range of types of disputes. Case studies of the Rochester, New York Community Dispute Services Project sponsored by the American Arbitration Association and the Institute for Mediation and Conflict Resolution Dispute Center in New York City are presented in Chapter 3 of this report. Both projects receive extensive referrals from individuals and agencies regarding criminal and civil disputes. Citizens representative of the local communities have been trained by the projects to serve as arbitrators. These citizens serve on a rotating basis and are paid for their services by the project. Hearings are generally scheduled within

ten days of the initial referral and involve attempts by the arbitrators to serve as conciliators and mediators in the early phases of the hearing. The arbitrators impose an agreement only in cases in which the mediational efforts are not successful. The arbitrator's awards stipulate the actions required of the disputants, and failures to adhere to the conditions of the award are enforceable in the civil courts. The majority of the states have modern arbitration legislation which provides the legal basis for the arbitrator's agreement. Table 2.1 on pages 38 to 43 presents a summary of the characteristics of the Rochester and New York projects. The American Arbitration Association has developed additional "Arbitration as an Alternative" projects in Cleveland, Elyria, and Akron, Ohio, and San Francisco. The AAA Philadelphia project has been institutionalized into the city's court system.

Arbitration of small claims matters. A number of small claims courts have developed arbitration programs. In some cases the choice of arbitration is voluntary. For example, in New York parties involved in a small claims dispute are given the option to have the dispute arbitrated by an attorney. Choice of the arbitration option waives the parties' right to appeal but is likely to be less expensive and less time-consuming than court processing. In California the arbitration of small claims within a given monetary range is voluntary for the plaintiff, but compulsory for the defendant if the plaintiff chooses to have the matter arbitrated. Appeal through trial de novo is available to defendants if they are not satisfied with the outcome of the arbitration. Wayne County, Michigan has developed an interesting variant of "advisory" arbitration of monetary claims. Cases are submitted to advisory arbitration when either of the parties requests it or the court orders it and the cases involve only relatively simple financial issues. Panels of three arbitrators hear the cases, and either party can reject the advisory arbitration recommendation and take the matter to court. If the party returning the case to court fails to win a judgment that is at least 10 percent higher than the original advisory arbitration recommendation the party must pay the court costs including the costs of the opponent's attorney.

A number of jurisdictions in Pennsylvania, Ohio, and New York have developed compulsory arbitration of small claims matters falling within a given monetary range. In each jurisdiction arbitration is typically conducted by a panel of attorneys, and disputants have the right to a trial de novo with the appellant being required to pay the arbitration costs. A number of studies have been

conducted of compulsory arbitration projects, and results are summarized in the Judicial Council of California's report A Study of the Role of Arbitration in the Judicial Process and in the Johnson et al. (1977) monograph cited earlier. In general, the projects have been judged to be economical, fast, and have reduced caseloads and backlog in the local court systems.

Consumer arbitration projects. As was noted earlier in the section on consumer mediation projects, many such projects provide arbitration as a last resort for disputes that have not been resolved by informal means and mediation. The Pittsburgh Better Business Bureau has developed a procedure by which the local branch of the American Arbitration Association arbitrates disputes which are not resolved by other means, and for which the disputants agree to arbitration. Thus far the program has arbitrated very few cases, however.

Contractually based arbitration. Many commercial contracts and labor/management contracts include clauses stating that disputes regarding the fulfillment of the contract will be submitted to arbitration. The American Arbitration Association has been very active in arbitrating such disputes, and the Association maintains panels of arbitrators with expertise in specific areas to arbitrate contractually based disputes. For example, the construction industry has long included arbitration clauses in its contracts, and the AAA maintains a nationwide panel of arbitrators with expertise in construction (e.g., architects, engineers, contractors, and attorneys).[25] The parties to the dispute are generally allowed to choose arbitrators from a list of prospective arbitrators. Arbitrators serve without compensation for the first two days but are compensated for longer cases. Studies of commercial arbitration have generally shown the process to be quite speedy and inexpensive. Arbitration is used between management and labor both for the development of collective bargaining contracts and for the settlement of contract disputes. Additional uses of arbitration in contractual disputes include some medical malpractice programs, securities and exchange arbitration, etc.[26]

Fuller (1963, 1971) has provided detailed information on the process of arbitration as well as insightful observations on the relationship of arbitration to adjudication and other forms of conflict resolution.

1.5.4 Fact-Finding

Fact-finding involves a third party judgment of the merits of a dispute following an investigation of the matter in controversy. The fact-finder typically lacks coercive power to enforce a settlement to the dispute but often derives authority from his neutral position which lends persuasive power to his finding. Some fact-finding inquiries involve the conduct of hearings at which the disputants can present their positions. These hearings differ from mediation in that the parties anticipate a judgment of the issues on the part of the fact-finder. Hearings in which both parties are simultaneously present to present their positions resemble nonbinding arbitration. Fact-finding inquiries often involve very limited contacts with the parties, however (e.g., phone conversations, letters, etc.), as in the case of newspaper action-lines, and these cases are very clearly distinguishable from the various forms of mediation and arbitration. Three forms of fact-finding will be briefly discussed to indicate the range of types of fact-finding activities: (1) media action-lines, (2) trade association projects, and (3) government ombudsmen.

Media action-lines. Many newspapers, radio stations, and television stations have developed action line projects. These projects typically have small staffs which respond to citizen requests for information and assistance in resolving disputes. The requests are generally made by phone or mail and often involve complaints regarding merchants and government agencies. The action line projects vary greatly in the extent to which they attempt to respond to all requests and in the types of services provided. Some projects respond to only the most recurrent or interesting problems while others maintain careful records of all requests for assistance and attempt to determine if the services provided were successful.[27] Assistance varies from providing a relevant social service agency referral to the complainant, or notifying the organization complained against of the complaint, to conducting an investigation of the complaint through contacts with both parties to the dispute. Flagrant abuses by governmental agencies and merchants are publicized by the media sponsors in the newspaper columns or radio and TV shows, and fear of negative publicity often induces organizations to negotiate settlements with the complainant. Johnson et al. (1977) provide an interesting discussion of the operation of media action lines including brief case studies of a number of projects. The authors note that in the Los Angeles area alone the combined requests to the various media programs

total "well over 100,000 complaints a year, which equals over one-third the annual caseload of small claims courts in the area."[28] Adequate data are not available on the degree to which these programs actually resolve disputes and substitute for court action. The KABC Radio Ombudsman program in Los Angeles claims, however, that it has had approximately 80% success in achieving resolutions to the roughly 50,000 complaints it processes per year.[29]

Trade association projects. Many industries have developed projects for processing consumer complaints. One of the first industry-sponsored projects was the Major Appliance Consumer Action Panel (MACAP). This projects responds to phone and mailed complaints from consumers, and staff members initially contact the target of the complaint to notify them of the complaint and request information. The MACAP reports that 94% of all complaints were resolved as part of this phase of their program. When cases are not resolved at this initial stage, they are given to a panel of reviewers who study the file, independently investigate the facts in controversy, and make a recommendation for a resolution. The parties are not bound to the recommendation. The MACAP processed nearly 4,000 complaints in 1975, and has processed approximately 15,000 cases in its first five years of operation.[30] Other industries have begun to develop similar programs such as the furniture industry's FICAP project and the automobile industry's AUTOCAP.

The trade association projects are typical of many fact finding operations which do not have direct contact with the disputing parties. The early stages of case processing in many Better Business Bureau projects are similar, involving only phone and mail communications among the project and disputants. These projects often go further and employ mediation and arbitration if the mail contacts are unsuccessful in resolving the dispute. Data are needed on the satisfaction of consumers with the trade association projects, the delays in processing cases, etc.

Government ombudsmen. Johnson et al. (1977) characterize a governmental ombudsman as an "independent, impartial, high-level public official stationed between the citizen and government. He is concerned equally with protecting the rights of the public and government officials by receiving and investigating allegations of bureaucratic abuse and reporting and publicizing the findings."[31] The American Bar Association has developed a Model Ombudsman Statute which can guide states in the development of ombudsman projects,[32]

and statewide ombudsman legislation has been passed in a number of states including Connecticut, Hawaii, Nebraska, Iowa, and Alaska.[33] The statewide ombudsmen respond to complaints from citizens regarding state government agencies and also can initiate investigations without formal complaints when such an investigation appears warranted.

In addition to statewide ombudsman programs, some cities have also developed ombudsman services. The Seattle, Washington ombudsman project is probably the largest, with a seven person staff and a 1976 budget of $135,000 resulting in it being larger than a number of statewide projects.[34] A particularly interesting demonstration ombudsman project was developed in Buffalo in 1967 with OEO funding. This project differed from many other ombudsman projects in that it employed neighborhood offices in ethnic areas staffed by "neighborhood aides" as well as a central office. All but 213 of the 1,224 complaints received during the project's eighteen months of existence were received from the neighborhood offices. The project evaluators (Tibbles and Hollands (1970)) indicate that the project benefited both citizens and city agencies by improving communication and resolving problems. The evaluators noted that neighborhood offices were excellent conduits for citizen complaints and recommended that projects of this type should provide independent neighborhood offices and staffs rather than shared facilities to insure both the appearance and fact of independence.

Verkuil (1975) has discussed the development of ombudsman programs in the United States and provides interesting observations regarding the functions of ombudsman programs. The Johnson et al. (1977) discussion of ombudsman projects presents an up-to-date summary of these programs in the U.S. In addition to the three types of fact-finding programs discussed above, numerous institutions and agencies have developed complaint offices which are in some ways comparable to ombudsmen. For example, many universities have developed ombudsman offices to assist students with complaints.

1.5.5 Administrative Procedures

A variety of dispute processing techniques have been developed which are highly dependent upon judicial functioning and yet fall short of the full-dress adjudication of a dispute. These processes

range from settlement arranged out of court by attorneys and yet closely oriented to the court process, to processes informally conducted by court officials (e.g., plea bargaining), to the routine forms of administrative processing of simple offenses such as traffic violations. In addition, some recent reforms have attempted to alter standard adjudicatory procedures in some areas by either reducing the need for adjudication or making adjudication simpler. Each of these forms of processing will be discussed briefly.

Court oriented processing. Many disputes are settled out of court but are processed virtually in the shadow of the courthouse. For example, attorneys in civil cases often arrange settlements by mutually invoking the threat of adjudication and its associated cost, delay, etc. The concern with adjudication can lead the parties to the dispute to compromise, and some efforts by attorneys resemble a hybrid form of mediation in which the two opposing attorneys serve as advocates for their respective clients and yet attempt to develop a common basis for agreement at the same time.

Informal court operated processing. Court personnel often become involved in arranging informal settlements to disputes. For example, court clerks in some jurisdictions attempt to conciliate or mediate minor matters which appear before them. Occasionally these efforts are formalized into a program such as the Rochester Pre-Warrant Screening Procedure described in Chapter 3 of this report, but more often they are simply informal methods used by a clerk to assist disputants in resolving their problem. In criminal cases, a modified version of this type of processing occurs in prosecutorial plea negotiations. The prosecutor avoids the need for a trial by bargaining with the defendant regarding a mutually acceptable plea or sentence recommendation. These bargains do not typically include the victim as a party to the negotiations, however, and thus differ from the above cited mechanisms.

Routine administrative processing. Matters which involve very simple factual situations and well defined legal precedents are often processed by routine administrative procedures in lieu of formal adjudication. Traffic offense processing is a common example of this type of procedure. Individuals violating traffic laws are often provided the option of paying a fine directly to the court without a court hearing unless they dispute the police officer's charge against them. This type of procedure saves

enormous amounts of court time and effort. Most jurisdictions allow traffic offenders to pay their fines by mail, further simplifying the procedure. The importance of this further procedural simplification was highlighted in Los Angeles. Prior to 1974, all drivers receiving a ticket for a moving violation were required to go to the courthouse for case processing. At the court over 70% of the drivers plead guilty to the offense by paying the appropriate fine. Over 560,000 drivers per year traveled to the court simply to pay the fines resulting in long lines, numerous phone inquiries to the court, wasted gas, more air pollution, lost time from jobs, babysitter fees, congestion in the vicinity of the courthouse, etc. The development of a procedure allowing mailing of fines reduced or eliminated many of the problems of the older procedure plus increased court revenues for fines and reduced court appearances to contest tickets. This example indicates the value of thoughtfully planned administrative procedures.[35]

Measures reducing or eliminating the need for adjudication. In the case of criminal offenses, decriminalization is the simplest way to eliminate court actions for a whole class of offenses. Debates are currently being conducted regarding decriminalizing a range of offenses from marijuana use to prostitution. The development of no-fault automobile insurance has provided an example of a means to reduce civil court action dramatically. The injured party in a jurisdiction having no-fault insurance is compensated by his insurance company without the need to resort to adjudication. Most states having no-fault insurance do not allow tort suits unless the claim exceeds a specified level.[36] Recent reforms in a number of states have eliminated the need for the extensive processing of probate cases unless a dispute exists regarding the distribution of the estate.[37] Additional reforms are being developed which would reduce or eliminate the need for adjudication of specific classes of cases.

Measures simplifying adjudication. The development of small claims courts in the early part of this century was designed in part to simplify the adjudication of minor matters. Costs were to be reduced, case filing was to be straightforward, and processing was to be speedy. When operating effectively these courts indicate some of the possibilities for simplified adjudication. Small claims courts in many jurisdictions have drifted away from simplified procedures, however, and illustrate the familiar pattern of formalization of once spirited reforms. Recent changes in divorce laws with the advent of no-fault divorce in many jurisdictions

illustrate another technique for simplifying adjudication. No-fault divorce laws reduce the number of issues which need to be addressed in divorce cases in which both parties agree to terminate the marriage.

1.5.6 Adjudication

Adjudication conducted by a judge in a court of law is our most formal dispute resolving mechanism. The judge represents the state and possesses the coercive power associated with such a position. Elaborate rules and procedures strictly limit the types of information presented in court and the order in which information is presented. Many of the processes discussed earlier have similarities to formal adjudication. For example, a fact-finder may proceed in similar fashion to an adjudicator but lacks coercive power to enforce his recommended settlement. An arbitrator has coercive power but typically differs from a judicial adjudicator in that he is not a government salaried employee, often sits on a panel of two or more arbitrators, uses relatively informal procedures, rules of evidence, etc., and may focus in detail on the underlying relationship and attempt to mediate a settlement. Arbitrator's decisions may typically be appealed for a trial de novo if the arbitration is compulsory, while other arbitration is voluntary either at the time of the dispute or by consent when a contract is initially developed.[38]

Fuller (1963, 1971) has discussed the appropriate role of adjudication at length, and has identified a number of limits to the use of adjudication. One major limitation is in areas in which no intelligible standard of decision exists. Fuller (1963) notes: "A judge is one who applies some principle to the decision of the case; if there are no principles, then the decider cannot be a judge--the case is not justiciable. In terms of the analysis proposed in this paper, the participation of the litigant by presenting proofs and arguments becomes meaningless if there is no rational standard that can control the decision. One cannot join issue in an intellectual void."[39] Many neighborhood disputes regarding matters that are highly idiosyncratic to a specific relationship may meet Fuller's threshhold of being not justiciable, and might better be dealt with by mediation. Fuller (1963) has also pointed out the difficulties of conducting adjudication in cases in which the problems are highly complex and not amenable

to "yes-no" or "more-less" decisions. Fuller (1963) characterizes these disputes as "polycentric" (after Polanyi (1951)), and provides cogent illustrations of the difficulties in adjudicating such disputes. Conflicts arising out of highly complex, reciprocal, long-term relationships may often be very difficult to adjudicate. Both parties are likely to have contributed in complex ways to the present dispute (or more likely disputes), and mediation or arbitration focusing upon the reciprocal nature of the relationship might be far more appropriate.

Numerous courts in the United States adjudicate disputes including the panoply of lower, upper, and appellate criminal courts, the various civil courts, juvenile courts, and courts with specialized jurisdictions such as landlord-tenant courts.

1.6 Proposals for Neighborhood Justice Centers

Given the wide array of potential dispute processing mechanisms reviewed above, it is necessary to consider which techniques or combinations of techniques might best serve the needs of individual communities. Recent proposals have suggested widely differing forums for processing minor civil and criminal disputes. These proposals differ both in the services recommended and the degree of coercion of disputants considered appropriate. Danzig (1973) has proposed an essentially non-coercive forum; Fisher (1975) recommends a highly coercive forum; and Sander (1976) has suggested the development of programs using a variety of techniques intermediate in their level of coercion of disputants. Each of these proposals will be reviewed briefly and further refinements recommended by the Pound Conference Task Force and the U.S. Department of Justice will be noted.[40]

1.6.1 Minimal Coercion of Disputants—Danzig's Community Moots

Danzig (1973) has recommended the decentralization of dispute processing through the development of "community moots." These programs would be similar in many respects to the "tribal moots" common in Liberia[41] and would stress the mediation and conciliation of disputes in informal settings. Danzig (1973) feels that many

types of cases would be appropriate for this form of processing including "family disputes, some marital issues (e.g., paternity, support, separation), juvenile delinquency, landlord-tenant relations, small torts and breaches of contract involving only community members, and misdemeanors affecting only community members."[42] Danzig notes that many criminal cases are dismissed because disputants decide that they do not want to involve acquaintances in the criminal courts and many civil proceedings are avoided because the parties are "too ignorant, fearful, or impoverished to turn to small claims courts, legal aid, or similar institutions." Community moots could reduce or eliminate these difficulties with traditional criminal and civil case processes.

Danzig (1973) stresses that community moot projects could vary depending on community needs but that a promising possibility would simply involve the employment of a counselor familiar with the neighborhood. The counselor could accept referrals from such sources as social agencies, the police, courts, individuals, etc. and would schedule sessions convenient to the disputing parties (e.g., at the home of a disputant if both parties agree to the location). At the moot sessions the disputing parties and any individuals they brought with them could discuss the matter in controversy and attempt to arrive at a settlement with the assistance of the counselor. If a disputant refused to attend the session the complainant would of course be free to proceed with normal court processing.

Danzig stresses that the counselor should not have coercive power, but rather the community itself can potentially bring pressure to bear upon disputants for maintaining agreements. This community impact upon the disputants would be maximized if a range of community members participated in the actual moot session. Danzig (1973) cites the example of a dispute between a teenage loiterer and a shopkeeper that might be effectively resolved to the benefit of the whole community by the presence at the moot of the teenager, his friends, the shopkeeper, his family and employees and other shopkeepers. Presumably, the counselor would insure that all parties were allowed to communicate their positions fully and the discussion of the case at hand might serve to reduce tensions generally in the community rather than increase them as often occurs in court cases. Felstiner (1974) has criticized the notion of community moots as being virtually unworkable in a complex atomistic society such as ours, and Danzig and Lowy (1975) have provided an interesting rejoinder to Felstiner's criticism. The

newly developing San Francisco Community Board Program is similar in many respects to Danzig's community moot concept, and Chapter 3 presents a case study of the program.

1.6.2 High Coercion of Disputants—Fisher's Community Courts

In contrast to Danzig's non-coercive model for a neighborhood justice program, Fisher (1975) recommends that "community courts" be provided by the legislature with exclusive jurisdiction over certain minor disputes and have the authority to impose sanctions when necessary. Fisher (1975) notes that Danzig's proposal for conciliation is admirable but unlikely to work without the project having the credibility that comes with coercive power. A community court could function in relatively small communities such as an apartment complex, and the court would be composed of three to five community members elected periodically. Lawyers would be excluded from participation as judges because of their potential undue influence on the other judges on the panel. The elected judges would be required to "undergo minimal formal training" and could have an attorney as an advisor when legal questions arose. Sanctions which might be available to a community court could range from demands for restitution on the part of the guilty party, to "deprivations from enjoyment of certain community property" such as recreational facilities, to eviction from the community. The formal courts would be employed as the enforcement apparatus when necessary. Fisher stresses that the hearings should be open to the public and scheduled at convenient times. Disputants would be provided the right of appeal to the formal courts if abuses of due process were perceived by a disputant. In support of his proposal, Fisher (1975) cites the successful operations of various university, labor union, and prison disciplinary mechanisms such as the Boston University program discussed earlier as well as various socialist programs such as Soviet Comrade's Courts.

Little imagination is required to envision Fisher's community courts readily declining into the legendary forums often associated with Australian marsupials. Narrow community groups might find themselves quite capable of unfairly sanctioning individuals who deviate from them, and the recourse to court appeal for abuses by the community court may be available only in theory to poor, uninformed members of the community. Fisher's extrapolation from the highly limited settings of university and prison projects to

the general society seem very strained, and the vast differences between the various socialist societies and American law and society make the socialist examples equally uncompelling.

1.6.3 An Intermediate Approach—Sander's Dispute Resolution Centers

Sander (1976) has recommended the development of programs which would include a range of dispute processing mechanisms. These Dispute Resolution Centers would be operated by the government and would screen cases into various processes or sequences of processes including mediation, arbitration, and fact finding. If necessary, cases would be referred to the courts for adjudication.

The Dispute Resolution Centers would provide an intermediate option between the non-coercive community moots recommended by Danzig and the highly coercive community courts proposed by Fisher. The mediation services of the Dispute Resolution Centers would presumably be similar to community moots in many respects but would differ in that the Center would be a government agency with close ties to the courts and could also provide binding arbitration when mediation failed. These characteristics would be likely to make the Dispute Resolution Center's mediation services a more credible option than those provided by the community moots. In Sander's model the courts would retain the power of adjudication and would not transfer this coercive authority to another forum as in the case of Fisher's community courts. The binding arbitration services offered by the Dispute Resolution Center would presumably be voluntary and would typically only be offered after attempts to mediate a dispute. If compulsory arbitration was employed, disputants would be provided the privilege of a trial de novo to appeal the arbitration. The fact-finding services of the Dispute Resolution Centers would provide a valuable supplement to the other dispute processing options and neither Danzig's nor Fisher's model include such a component.

The general mediation and arbitration projects discussed earlier illustrate how isolated components of the Dispute Resolution Centers could operate. The Columbus and Miami mediation projects are operated by the local prosecutors' offices and demonstrate the possibilities for running mediational programs in official

justice agencies. The New York and Rochester arbitration projects are sponosred by independent organizations but have close ties to their local courts. The case studies in Chapter 3 discuss the operations of these projects in detail. A Dispute Resolution Center would presumably bring such programs under one roof and unitary sponsorship and supplement them with related dispute processing mechanisms such as ombudsman services perhaps comparable to the Buffalo OEO ombudsman project cited earlier.

1.6.4 Pound Task Force's Neighborhood Justice Centers

The National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (the Pound Conference) was held in 1976 under the joint sponsorship of the American Bar Association, the Judicial Conference of the United States and the Conference of Chief Justices. President Walsh of the ABA subsequently appointed a Task Force to insure that the reforms discussed at the conference would be carefully considered. The Task Force was chaired by Griffin Bell and produced recommendations in its Report of the Pound Conference Follow-Up Task Force.

A central recommendation was for the development of "Neighborhood Justice Centers," defined as facilities which would "make available a variety of methods of processing disputes, including arbitration, mediation, referral to small claims courts as well as referral to courts of general jurisdiction."[43] Both civil and criminal matters would be appropriate for such an alternative forum. The Task Force did not recommend a unitary model for such a forum but stressed the need for the flexible adaptation of such programs to local conditions. The aim of the Task Force recommendation was to "stimulate experimentation, evaluation, and widespread emulation of successful programs."[44]

1.6.5 Neighborhood Justice Center Program of the Department of Justice

The U.S. Department of Justice has recently initiated a program to develop experimental Neighborhood Justice Centers in three communities. The program was developed jointly by the National Institute

of Law Enforcement and Criminal Justice, research arm of the Law Enforcement Assistance Administration, and by the newly formed Office for Improvements in the Administration of Justice, headed by Assistant Attorney General Daniel Meador. As in the case of the ABA recommendations, the Department of Justice acknowledges the need for individual communities to tailor programs in line with their local needs. The Department has recommended that the programs incorporate both mediation and arbitration, use community members as hearing officers, actively refer disputants to social service agencies and appropriate courts when necessary, and process both minor civil and criminal cases. Appendix B presents a summary of the Department of Justice recommendations for Neighborhood Justice Centers. The Department intends to encourage the independent development of similar projects by communities across the country.

The Neighborhood Justice Centers being developed by the Department of Justice come closest to being variants of the Dispute Resolution Centers recommended by Sander (1976), in contrast to Danzig's community moots and Fisher's community courts. The various mediation and arbitration projects discussed in Chapters 2 and 3 of this report provide considerable guidance in developing such projects because they currently provide many of the services contemplated for Neighborhood Justice Centers.

1.7 Conclusions

1.7.1 The Range of Mechanisms Potentially Useful to Dispute Centers

Neighborhood Justice Centers can employ any of the non-adjudicatory third party dispute resolution techniques outlined in Table 1.1 and discussed in the preceding text. These approaches include conciliation, mediation, arbitration, fact-finding, and the informal court oriented processing listed under "administrative procedures" in which compromises are encouraged in light of impending adversary proceedings. Sander (1976) has recommended that the whole panoply of dispute processing mechanisms be housed together and that screening staff allocate incoming disputants to specific processes or sequences of processes (e.g., mediation followed by arbitration

if necessary). This recommendation seems sound. Clearly, this type of thorough restructuring of the way in which we process disputes cannot be accomplished overnight. The Department of Justice's pilot projects, incorporating mediation and arbitration for the processing of disputes, will provide a valuable first step toward the development of a comprehensive and highly integrated dispute processing mechanism suitable to the widely varying types of disputes which occur in society.

1.7.2 Educating Disputants in the Use of Unilateral and Dyadic Approaches

Although the unilateral and dyadic approaches to dispute processing cited earlier are under the control of the individual disputants rather than third party forums, Neighborhood Justice Centers can provide a valuable service in teaching disputants how to use these informal techniques for dispute processing. Many disputes could be successfully resolved without the need for third party intervention if disputants first attempted to use constructive unilateral and dyadic approaches such as careful consideration of whether the dispute is justified, attempts at negotiation, etc. Mediational sessions at the Neighborhood Justice Center can provide disputants with valuable experience in negotiating differences to arrive at a compromise. Neighborhood Justice Center staff should receive training in methods of educating disputants to resolve disputes independently. Hopefully, the Centers could serve both to resolve immediate conflicts and also teach citizens how to avoid the need for official third party intervention in the resolution of future conflicts.

1.7.3 Potential Pitfalls in the Development of Neighborhood Justice Centers

The Neighborhood Justice Center concept has received strong support from Chief Justice Burger, Attorney General Bell, the American Bar Association, the American Arbitration Association, the Institute for Mediation and Conflict Resolution, and the press.[45] In addition, local governments and criminal justice agencies have typically been very receptive to the development of experimental dispute resolution centers in their jurisdictions.

One reason for this positive reception is the dramatic problems of the courts cited earlier. James Kilpatrick, a syndicated columnist, recently summarized these difficulties by noting, "The major problem of American justice is not the gargantuan lawsuit. These take care of themselves. The major problem lies in the inability of our system to deal promptly and justly with the little cases that can create 'festering sores and undermine confidence in society.'"[46] Neighborhood Justice Centers could presumably make a significant contribution to the resolution of these minor disputes, and provide a badly needed supplement to our courts. The intrinsic appeal of the Neighborhood Justice Center concept to criminal justice personnel was underscored recently in a New York Times article regarding the Brookhaven Township dispute resolution project. Harry Organek of the Suffolk County District Attorney's staff stated, "The whole concept is great. Just the idea of a citizen's group working to help people who have known each other but who have trouble getting along is good. It's a much better idea than using the criminal justice system, which uses punishment as a means of correcting wrongs and usually still can't get at the problem between two people in the first place."[47]

In addition to responding to the needs of the courts, Neighborhood Justice Centers have also gained support because of their relationship to other social reform efforts in the society. A recent newspaper editorial highlights this notion by noting, "For a variety of reasons, reformers in the 1970s have turned their sights from large-scale social programs to strengthening basic institutions. We no longer seek the Great Society or even the Model City. We seek better neighborhoods."[48] A Presidential Commission has been established to develop a comprehensive understanding of ways to strengthen our neighborhoods, and many agencies including the Department of Housing and Urban Development, the Department of Health, Education, and Welfare, the Legal Services Corporation, and others are expected to contribute support to neighborhood based programs.

The combined forces supporting Neighborhood Justice Centers have enabled the concept to achieve a promising beginning at both the federal and local levels. Even with broad-based support and an apparently sound concept, however, the move to develop Neighborhood Justice Centers is not assured of success. Other promising reforms have failed to achieve their goals due to an array of problems common to many social reform projects. Neighborhood Justice Centers are not likely to be immune from these same problems. Program

developers should carefully consider the various factors which have limited the success of some previous social projects in order to avoid repeating earlier mistakes and to increase the chances of widespread implementation of the Neighborhood Justice Center concept. Problems which deserve particular attention include: (1) overpromising potential achievements, (2) lack of attention to mechanisms for ongoing local funding, (3) excessive bureaucratization, and (4) transformation of original goals. Each problem will be discussed briefly in turn.

Overpromising Potential Achievements. Many researchers have noted the problems with exaggerated claims for programs and the resulting disappointment when the inflated goals are not met. Toby (1973) has characterized the war on poverty as an exercise in the politics of unrealistic expectations, and a quote in a Time article in May 1966, roughly two years after the program began, stated that, "the war on poverty has been first in promises, first in politics, first in press releases--and last in performance."[49] Edelman's (1971) book on Politics as Symbolic Action amply illustrates the problems with overpromising results for social programs. Individuals involved in the development of Neighborhood Justice Centers should keep the lessons of earlier programs in mind when program goals are developed and should carefully consider the potential future problems resulting from exaggerated and grandly stated project goals. Neighborhood Justice Centers may have a profound impact upon court caseloads, system costs, neighborhood tension, and other variables in the future once programs are firmly established and integrated into referral networks. In the short run, however, programs will need to be carefully nurtured. They are unlikely to have massive impacts overnight, and researchers and the public should not be misled to anticipate immediate, dramatic results.

Lack of Attention to Mechanisms for Ongoing Local Funding. Many apparently successful programs terminate after the federal funds run out. Rein and Miller (1973) have written extensively about the problems of transferring federal demonstration projects to local funding, and note, "What about the morning after the wedding? Who will pay for felicity during the long years ahead, at steadily increasing prices? Cities have limited tax bases. Boards shy away from projects with increasing budgets--the standard of efficiency is often measured by low cost, not high yield. Who will keep the project going?" There are no magical formulae which can insure continued local funding of an experimental project. Projects need to be conscientious in establishing ties with local funding

sources, provide needed services as inexpensively as possible, and effectively develop a broad base of support in the community. The Columbus Night Prosecutor Program has been successfully integrated into the local budget presumably due to its service achievements. The newly developing Los Angeles project is giving consideration to the possibility of employing a sliding scale of charges to clients once the program has established credibility. Particularly poor clients would continue to receive free services. The project anticipates that this practice might encourage local funding by demonstrating that the project is able to pay for at least part of its expenses on its own. The Brookhaven, New York project plans to develop branch offices in "free" community buildings (churches, YMCAs, schools) and thereby provide services at low cost. Each project needs to evaluate local conditions carefully and make plans as early as possible to encourage ongoing funding.

Excessive Bureaucratization. Researchers have long warned about the tendencies of organizations to become overly bureaucratized.[50] Nejelski notes that this "formalism" results in organizations following "the letter of the law and not its spirit. Their motivation can be merely self perpetuation, not service to their clients." This trend is often accompanied by efforts to modify informal structures into highly formal ones. For example, Nejelski points out that, "The juvenile courts and workmen's compensation tribunals after a few decades develop the same rules of evidence, adversary proceedings, hearing officers who want to be called judges, and burdensome backlogs which they initially replaced."[51] This type of transformation could potentially occur in Neighborhood Justice Centers if program operators and funding organizations did not guard against the possibility. Nejelski (1977) has noted Jefferson's draconian solution for this problem--a thorough restructuring of the instruments of government every twenty years. Presumably, this response could be avoided if conscientious efforts were made to resist "formalization." In any event, program developers should be aware of the well documented tendency of organizations to become rigid, overly complex, and unresponsive to their clientele.

Transformation of Original Goals. In addition to problems of overbureaucratization, organizations often become diverted from their original goals. For example, Sander has noted in regard to small claims courts that, "Next to the juvenile court, there has probably been no legal institution that was more ballyhooed as a great legal innovation. Yet the evidence now seems over-

whelming that the Small Claims Court has failed its original purpose; that the individuals for whom it was designed have turned out to be its victims."[52] Small claims courts in many jurisdictions serve primarily as government funded collection agencies for merchants rather than as mechanisms for resolving the disputes of individual citizens. Neighborhood Justice Centers should carefully guard against similar transformation. Management information statistics on the types of cases handled can help programs determine whether the cases they are processing are in keeping with original program goals.

CHAPTER 2
NEIGHBORHOOD JUSTICE CENTERS: AN ANALYSIS OF MAJOR OPTIONS

Neighborhood Justice Centers can clearly vary on a wide range of dimensions, from where they are located to how they acquire cases, to how they process appeals, etc. For the purposes of this study, twelve major dimensions on which Neighborhood Justice Centers can vary will be discussed. These dimensions comprise the most obvious, and probably the most significant variables for characterizing specific Neighborhood Justice Centers. The dimensions are:

1. the nature of the community served
2. the type of sponsoring agency
3. project office location
4. project case criteria
5. referral sources
6. intake procedures
7. resolution techniques
8. project staff
9. hearing staff training
10. case follow-up procedures
11. project costs
12. evaluation

Table 2.1 presents a summary of the six sampled dispute processing projects in terms of these twelve dimensions. In addition, information is provided regarding the staff organizations, the models used in developing project structures and additional services provided by the projects.

Table 2.1
Major Characteristics of the Six Sampled Dispute Processing Projects

FEATURES \ CITIES	Boston	Columbus	Miami	New York City	Rochester	San Francisco
Project Name	Boston Urban Court Project	Columbus Night Prosecutor *Program*	Miami Citizen Dispute Settlement Program	Institute for Mediation & Conflict Resolution Dispute Center	Rochester Community Dispute *Services Project*	Community Board Program
Start-up Date	9/75	11/71	5/75	6/75	7/73	In planning stages
Community Served						
Name	Dorchester District, Boston, Massachusetts	Franklin County, Ohio	Dade County, Florida	Manhattan and Bronx, New York	Monroe County, New York	Selected Sections of San Francisco
Population	Dorchester: 225,000	County: 833,249 Columbus: 540,025	County: 1,267,792 Miami: 334,859	Manhattan: 1,539,233 Bronx: 1,471,701 Total: 3,010,934	County: 711,917 City of Rochester: 296,233	San Francisco: 715,674
Sponsoring Agency						
Name	Justice Resource Institute (non-profit)	City Attorney's Office, Columbus, Ohio (Contractor: Capital University Law School)	Administrative Office of the Courts	Institute for Mediation & Conflict Resolution (non-profit)	Rochester Regional Office of the American Arbitration Association (non-profit)	Community Board Program (non-profit)
Source of Funds	Law Enforcement Assistance Administration	Originally Law Enforcement Assistance Administration. Now city funded	Law Enforcement Assistance Administration	Law Enforcement Assistance Administration	Law Enforcement Assistance Administration	Foundation Funds
Location	Private storefront near the court	Prosecutor's office	Government building which also houses court & district attorney	Office building in Harlem, not near court	Downtown office building near the court	Likely to have offices in the neighborhoods
Case Criteria						
General Rationale	Generally ongoing relationships among disputants	Generally ongoing relationships among disputants and bad checks	Generally ongoing relationships among disputants	Generally ongoing relationships among disputants	Generally ongoing relationships among disputants	Generally ongoing relationships among disputants

Table 2.1 (continued)

Major Characteristics of the Six Sampled Dispute Processing Projects

FEATURES \ CITIES	Boston	Columbus	Miami	New York City	Rochester	San Francisco
Case Criteria (continued)						
Types of Cases	36% family disputes; 20% neighbor; 17% friends; 10% landlord/tenant; 17% miscellaneous	39% interpersonal disputes, 61% bad checks	Statistical data are not currently available. Many assaults, harassments, neighborhood problems, domestic problems	Statistical data are not currently available. Cases include both misdemeanors and felonies	Approximately 2/3 are interpersonal criminal matters, 14% city regulations, 5% bad checks & miscellaneous. May begin to process family court cases	Not Applicable
Referral Sources						
Walk-ins	See Other	(to prosecutor)	20% approximately	6%	1975: 14%; 1976: 18%	(likely to be high)
Police	2.2%		20% approximately	42%	– 1%	(likely to be high)
Prosecutor	See Bench	Most cases received through this office	60% approximately		6% 11%	
Clerk	33.4%			52%	66% 70%	
Bench	57.4% (including district attorney)	10-15% approx.			11%	
Community Organizations	See Other				– –	"Third party" referrals will be encouraged
Other	7%				2% 0%	
Screening/Intake Procedures	Staff member attends morning arraignment sessions; staff also answer calls from bench. Interviews conducted at court or project office	Staff members of district attorney's office & intake staff of project refer disputants to project. Respondents are requested to appear at hearing or face possible charges	Intake staff are located at the project office & interview clients referred to the project from other criminal justice agencies	Cases are received from intake workers at summons court, criminal court, & police desk of district attorney's office	The project intake worker screens and refers cases at the clerk's office. Walk-in cases are screened at the project's office	Currently being developed

Table 2.1 (continued)

Major Characteristics of the Six Sampled Dispute Processing Projects

FEATURES / CITIES	Boston	Columbus	Miami	New York City	Rochester	San Francisco
Resolution Techniques						
Type	Mediation	Mediation	Mediation	Mediation followed by imposed arbitration if mediation is unsuccessful. Only 5% of cases have required imposed arbitration	Mediation followed by imposed arbitration if necessary. In 1976 40% of cases heard required an imposed arbitration award	Mediation
Enforceability of Resolutions	Court cases continued pending follow-up after mediation	Disputants are informed that case charges will be filed if case is not satisfactorily resolved. Respondents are occasionally placed on prosecutorial probation	Disputants are informed that case charges may be filed if case is not satisfactorily resolved	Arbitration agreements are prepared at the end of all hearings & are enforceable in the civil court	Arbitration agreements are prepared at the end of all hearings & are enforceable in the civil court	Peer pressure
Time Per Hearing	2 hours	30 minutes	30 minutes	2 hours	One hour and 45 minutes	Not Applicable
Availability of Repeat Hearings	Rarely more than two	Rarely used	Very rare	Most cases are completed in 1 session. Small number require two	Rarely used	Not Applicable
Use of Written Resolutions	Yes	Rarely used	Yes	Yes. Resolutions are binding	Yes. Resolutions are binding	Yes (unsigned ones are planned)
Hearing Staff Qualifications and Training						
Type	Diverse group of community members	Law students	Professional mediators	Diverse group of community members	Diverse group of community members	Diverse group of community members
Form of Recruitment	Widespread advertising, group contact	Contacted by staff at Capital University Law School	Through community contacts	Contacts with community groups and agencies	Contacts with organizations	Widespread effort to contact. Community meetings
Number Used Per Session	2-3	1	1	1-3	1	5
Rate of Payment	$7.50 per night	$3.75 per hour	$8-10 per hour	$10 per session	$25 per case	Not determined yet (may be same as jurors)

Table 2.1 (continued)
Major Characteristics of the Six Sampled Dispute Processing Projects

FEATURES \ CITIES	Boston	Columbus	Miami	New York City	Rochester	San Francisco
Hearing Staff Qualifications and Training (continued)						
Training	40 hour training cycles originally conducted by IMCR, and now by local staff	12 hours of training conducted by the Educational and Psychological Development Corporation	Discussions and co-mediation with experienced mediators	50 hours of training conducted by IMCR	40 hours of training conducted by AAA	2 day training cycles are planned
Follow-up Techniques						
Appeal/Rehearing Availability	Yes, but rare	Rarely used. Disputants can return on new charges	Yes, but rare	Only if both parties agree. Parties can appeal under state law if they feel award was arrived at fraudulently	Yes, if both parties agree	Probably appeal to new board
Follow-up Contacts	Disputants are contacted two weeks after hearing and again three months later	Disputants are contacted 30 days after hearing to see if resolution is being maintained	No. Project plans follow-up in summer of 1977	Yes. 30-60 days post hearing to see if resolution is being maintained	Assist in maintaining resolution if contacted. No systematic re-contact	Some follow-up planned
Case Preparation for District Attorney/Court	No	Yes. Charging material is prepared and filed if necessary	Court is contacted regarding outcomes	No	No	No
Overall Costs and Unit Costs						
Annual Operating Budget	$105,268****	$43,000	$150,000	$270,000	$65,000*	$167,500
Total Annual Referrals	350	6,429** (1976)	4,149 (1976)	3,433***	663 (1976)	Not Applicable
Cost/Referral	$300	$6.69 plus in kind costs	$36.15	$78.65	$98.03	Not Applicable
Total Annual Hearings	283	3,478 (1976)	2,166 (1976)	649***	457 (1976)	Not Applicable
Cost/Hearing	$372	$12.36 plus in kind costs, approximately $20	$69.25	$416 (recently $270)	$142	Not Applicable

Table 2.1 (continued)

Major Characteristics of the Six Sampled Dispute Processing Projects

FEATURES \ CITIES	Boston	Columbus	Miami	New York City	Rochester	San Francisco
Goal Achievement						
Total Annual Referrals	350	6,429 interpersonal disputes in 1976; 10,146 bad checks; total = 16,575	4,149 (1976)	3,433 extrapolated from 15-18 months through November, 1976	663 (in 1976)	Not Applicable
Percentage Having Hearing	7[illegible]%	54% of interpersonal disputes	54%	46% hearing scheduled, 19% held due to clients resolving disputes	69% (in 1976)	Not Applicable
Percentage of Hearings Resulting in Resolutions	89% (i.e., written agreement)	Not Applicable	Project reports 97%	100% - 95% mediated, 5% arbitrated	100% due to arbitration provision. 60% mediated agreement; 40% arbitrated agreement	Not Applicable
Percentage of Failures to Uphold Resolutions	15%	10% (survey of 892 1976 cases)	Not Available	9% according to a follow-up	Unknown	Not Applicable
Percentage of "Resolved" Cases Returning to Court	Unknown	2.2%	No[illegible]iable	Less than 1%	5% seek enforced agreement	Not Applicable
Project Organization						
Total Number of Project Staff	4	Approximately 5 full-time equivalents	8	10	[illegible]	5½
Administrative	Supervisor	Coordinator, Director	Program Director, Administrative Officer	Executive Director, Center Director, Summons Court Supervisor, fiscal officer	Project Director, Coordinator, Tribunal Administrator	Project Director Program Manager
Intake	2 case coordinators	6 senior clerks, 6 clerks	3 intake counselors	Intake Coordinator, Intake Worker, Police Liaison	Intake Worker (partly by Tribunal Administrator)	2½ organizers
Social Service	Case coordinators provide referrals	6 social work graduate students	Social worker	Social worker		

Table 2.1 (continued)

Major Characteristics of the Six Sampled Dispute Processing Projects

FEATURES \ CITIES	Boston	Columbus	Miami	New York City	Rochester	San Francisco
Project Organizati[illegible] (continued)						
Mediation	Approximately 50	Approximately 30	Approximately 20	Approximately 50	Approximately 70	Will train approximately 50
Clerical	Administrative Assistant	None	1 secretary, 1 receptionist	Receptionist, Administrative Assistant	Administrative Assistant, Receptionist	Evaluator
Project Models	IMCR Dispute Center		Columbus Project Rochester Project	Rochester Project, Columbus Project, Jewish Conciliation Boards, Bronx Youth Project	Philadelphia Arbitration As An Alternative Project	Danzig's model of Community moots
Additional Services Provided	Disposition program/victim service component	Problem drinker's group, battered wives' group			Community Group Dispute Resolution, training programs	Community Group Dispute Resolution

NOTES

* Total budget is $126,723, including additional components (community group dispute resolution and community organizational training)

** Interpersonal disputes only – bad check cases add an additional 10,196 referrals but involve very little project case processing time

*** Extrapolated from aggregated data on initial 18 months of referrals through November 30, 1976

**** Based on portion of larger Urban Court Budget attributed to the mediation component; case figures are estimates for the corresponding years (6/77 - 6/78).

In the sections that follow, each of the major dimensions is discussed in turn, and an attempt is made to identify the advantages and disadvantages of the various options that are available on each dimension. In some areas, specific options seem to be clearly preferable due to empirical findings or logical analysis. In many other cases, however, the selection of a given option is more difficult because data regarding the relative merits of comparable options are not available, or the selection of an option is heavily determined by one's vision of the aims of Neighborhood Justice Centers as well as by the available data. Various value judgments which can influence the choice of Neighborhood Justice Center components are discussed along with a review of available empirical data.

2.1 The Nature of the Community Served

Neighborhood Justice Centers can clearly be developed in many types of communities. The need for Neighborhood Justice Centers is not likely to be constant in all areas, however. Both rural areas and small towns are likely to have many of the older dispute resolution mechanisms still intact. Churches, extended families, neighborhood police officers, and community organizations have traditionally served the function of assisting those associated with them in resolving minor disputes. Both rural areas and small towns are likely to have these institutions at least partially in place. Research on the degree to which this is true would be valuable, however, since the stereotype of the quality of support institutions in rural areas and small towns may be lagging behind the realities in those areas. The citizen dispute processing projects which have been developed have tended to be in urban areas and have been justified in part because of the atomistic life styles common in the cities, and the consequent lack of ties with traditional dispute resolving institutions. Barring research to the contrary, urban communities and their associated lower courts would seem to be in the greatest need of dispute processing projects.

Within urban areas, dispute centers have been developed in a variety of communities. The demographic makeup, governmental structure, and other characteristics differ widely between the cities studied, with New York's project having a potential target

population of over three million, while Rochester's primary target population is 296,000.

A number of strategies are available for selecting a target population within a given urban area. In Rochester, Miami and Columbus the local projects accept cases from throughout the counties in which they are located. Referrals from within the specific cities tend to dominate the case loads and project offices are located in or near the downtown areas of the cities in each case. The Miami project has made a concerted effort to encourage referrals from throughout the county and has established three branch offices in outlying government buildings.

The Boston, New York City, and San Francisco projects have all adopted a different strategy and have been structured to receive referrals from just a portion of the city's population. In New York, two boroughs--Manhattan and the Bronx--are served. However, the vast populations in these boroughs make their combined population of over three million far larger than those of the counties served by other projects. Thus, while New York is serving a portion of the city population, its target clientele can hardly be characterized as a small intimate group. In fact, the relatively small percentage of referred cases which go on to hearings in the New York project may imply that the area served is too large and disparate to benefit from the community spirit present in smaller areas. The Boston project only provides services to the Dorchester district of the city, an area with a population of approximately 225,000. This area is quite large but is still considered to evoke a "sense of community" from its residents. The San Francisco project is working to localize its target areas within limited and highly circumscribed areas of San Francisco. The project is currently establishing its first community board and has chosen an area of the city referred to as Visitacion Valley. This area has a total population of approximately 22,000 and is considered to be composed of five subcommunities. The project presently plans to develop two community panels, one in the Geneva Towers area which is a predominantly black community, and one in the upper and lower valley area which is made up primarily of whites and Samoans.

An alternative is to define a target community by demographic characteristics rather than geographic areas. Available census data would enable researchers to define these non-geographically

based communities. In some sense, for example, subcultural groups form a "community" regardless of the location of their residences. However, substantial logistical difficulties are likely to occur in defining a project's target community solely in terms of demographic characteristics, due to the need to publicize the program to a widely dispersed "community" and to educate referral sources to supply only clients with specific characteristics. In addition to logistical difficulties, limiting the target community in this way can eliminate one of the strengths of a project. Numerous projects have found that they serve as a meeting ground for people with different ethnic, racial and socioeconomic characteristics. The Rochester project, for example, was founded by an interracial advisory board after the city experienced racial conflict during a major school reorganization. The Boston project has served a similar function of bringing together a community with a rapidly changing demographic makeup.

The experience of these latter two projects confirms the desirability of locating Neighborhood Justice Centers in communities whose residents have shown an interest in group problem solving. At one extreme, Rochester and Boston were communities experiencing fairly severe conflict as a result of changing racial balances. However, this issue served to organize the communities, raising a spirit of activism extremely conducive to program development efforts. As the founder of Boston's project noted, "The voices were often negative, but at least there were voices." Similarly, communities with active citizen groups--be they strong tenants' associations or neighborhood improvement groups--may be expected to yield a receptive climate for neighborhood justice.

Another factor critical to project success is the receptivity of the community's criminal justice system. All of the operating projects studied rely heavily upon criminal justice agencies for referrals. It is doubtful that a project would receive sufficient referrals if it relied only on the community and social service agencies, unless perhaps it were intra-institutional, serving only a housing project, school, or other contained group. The San Francisco project does plan to rely heavily on walk-ins and referrals from community sources, on the assumption that citizens need a real neighborhood alternative to official contact. Nevertheless, in the absence of any experience with this model, the support of official criminal justice agencies can be considered crucial. Clearly, the presence of other police or court reform projects is a reasonable indicator of the reception a project is

likely to receive. Once key officials have accepted a program, the efforts of the project staff are likely to be primary determinants of the ongoing cooperation and referral policies of criminal justice agencies. In general, planners of the projects studied were able to gain the initial support of most of the relevant police, prosecutorial and judicial officials; any remaining skeptics have been won over by observing project staff and operations.

2.2 Type of Sponsoring Agency

The choice of a specific form of organizational sponsorship is likely to be influenced by a number of factors including the types of cases desired, the specific stage of criminal justice processing seen as most appropriate for diversion into mediation, the availability of organizations willing and able to sponsor the project and the degree of coercive authority desired by the project. The most basic decision to be made is whether the project is to be attached to a governmental agency or to be under private sponsorship.

2.2.1 Private Organizational Sponsorship

Four of the projects which were studied intensively are sponsored by private agencies. A central advantage of private sponsorship is the ability of the program to project an image of total neutrality. Any project which is attached to criminal justice system agencies has the automatic problem of being viewed by some as presumptively biased in favor of the complainant. This assumption is particularly common in the case of projects attached to the police or the prosecutor. A second related advantage is the reduced stigmatization to the parties in having their dispute processed by a private organization. Even in the case of complaints which are dismissed at early stages of criminal justice system processing, defendants typically suffer some loss of face to their peers merely due to the contact with the system. In the case of reciprocally hostile relationships in which both parties have consistently antagonized one another, this stigmatization of the party which "lost the race to the courthouse" is likely to be particularly galling and may serve to harden the resentment of the defendant against the complainant independent of other aspects

of their dispute. A third advantage of private sponsorship is the ability of the project to develop a broad base of support among community members, and to use the services of community members in all phases of project development. Private projects such as the San Francisco Community Board and the Rochester Community Dispute Services Project have governing boards made up of a diverse range of community members. In many cases these governing boards have developed the basic structure of the project from the grassroots up (e.g., see the San Francisco and Rochester case studies). These projects can claim to be community-based in the most fundamental sense of the word, and this attribute may enhance the likelihood of the project's receiving certain types of cases which would not voluntarily enter a system developed from the top down. Government sponsored projects can presumably also develop advisory boards of community members. These boards could not have the governing authority of boards operating private organizations, but could provide significant input into the policy decisions and structure of governmental projects.

Private agency sponsorship has disadvantages as well as advantages. If a project is interested in receiving referrals from criminal justice agencies rather than just from the community, close ties must be maintained with those agencies. Decisions within the agencies can have a profound impact on the vitality of the project. For example, the development of the pre-warrant hearing procedure by the Clerk's Office in Rochester, and the revised practices in case docketing in the Summons Court in New York City have had significant impacts upon the referrals received by the Rochester and New York projects. Similarly, the Boston project's dependence upon the court for referrals makes the project vulnerable to any policy or personnel changes in the court. The sections on "referral sources" in the respective case studies provide examples of the ways in which referral agency policies can dramatically influence project operations.

Attempts to develop privately sponsored dispute processing projects should include careful attention to the development of close working relationships with criminal justice referral sources. Project designers should keep the possibility in mind that total dependence on a single agency can conceivably result in control of internal project policies by that agency by the selective provision of referrals contingent on project compliance with agency desires. The above cited advantages of private sponsorship would be likely to rapidly disappear in situations in which the

"private" project is a de facto branch of a specific governmental agency.

An additional consideration in deciding between private or public sponsorship of a dispute processing project is the availability of professional assistance in operating the project. Two of the four privately sponsored projects reviewed in this study were sponsored by agencies with a great deal of sophistication in dispute resolution. The American Arbitration Association has sponsored numerous Arbitration As An Alternative Projects for the settlement of citizen disputes including the Rochester project studied here. The Institute for Mediation and Conflict Resolution has similar extensive experience in dispute resolution and sponsors the New York project. The availability of organizations such as these as a resource provides considerable advantages to some privately sponsored projects.

The question of long-term funding is also relevant to the choice of public versus private sponsorship. Public agencies have ongoing budgets and have the capacity to "institutionalize" projects. Private agencies often experience great difficulties in continuing program operations after the federal demonstration funds run out. To the extent that a private project's achievements can rub off on relevant public agencies, projects are likely to acquire public agency support which can be translated into funding support from the city or county budget. One possible mechanism for this generalization of a private project's successes to public agencies is partial collaborative operation under some contractual arrangements with the referral agencies. These arrangements would enable the typically politically sensitive agencies to receive some credit for project achievements, and yet this shared credit would be unlikely to diminish the projects significantly. Total dependence on public agencies for contractual support would be less desirable because when cutbacks were forced upon the agency, the project contract would be a likely early target.

2.2.2 Public Agency Sponsorship

Two of the sampled projects are sponsored by governmental agencies. The Columbus Night Prosecutor Program has been institutionalized as part of the Columbus City Attorney's Office, and the

Miami Citizen Dispute Settlement Project is operated by the Administrative Office of the Courts in Florida's 11th Judicial Circuit. The Columbus project has an additional interesting feature, in that the actual day-to-day operations of the project are carried out by Capital University law students under contract to the City Attorney's Office, thus combining agency sponsorship with the use of personnel from a private institution.

Government agency sponsorship has a number of advantages. First, the problems in case referrals experienced by some privately sponsored dispute processing projects are less likely to occur. Particularly when the project is attached to the Prosecutor's Office or the Clerk of Court's Office, referrals are under the control of the sponsoring agency and can be varied appropriately to enable the project to have sufficient referrals. Agency sponsorship can also be used to compel the appearance of respondents. The fact that the agency controls arrests (in the case of the police) or charges (in the case of the prosecutor) can make a "request" to appear on agency stationery very persuasive. The privately sponsored Rochester project, for example, initially used project stationery in letters to respondents, but later changed to Court Complaint Clerk stationery to further encourage the appearance of respondents.

The disadvantages of government agencies are the mirror image of the advantages cited for the privately sponsored projects: (1) a presumption of bias in favor of the complainant may occur in the case of agency sponsorship, (2) stigmatization of clients may occur simply due to the association with the criminal justice system, and (3) difficulties are likely to occur in fully integrating community members into the development and operation of the project.

The choice of a specific governmental agency will depend upon the project developers' interest in intervening at a specific stage of case processing and also on the willingness of agency officials to support the development of a dispute processing project. The police, the prosecutor's office, and the courts are three major possibilities for project sponsorship.[1]

- *Police Sponsorship*

A dispute processing project affiliated with the police would have the advantage of intervening at the earliest possible stage in case development. The San Francisco Board Project has decided to use the police as the primary source of referral, and has received the support of the police in their plans. The primary advantage of police sponsorship is the ability to receive cases close to the time of the incident and before the system has expended considerable resources and perhaps stigmatized the defendant as well. Pre-arrest diversion of cases into the dispute project would avoid the need for the elaborate and expensive booking procedures commonly practiced by the police at arrest. Photographs, fingerprinting and their transfer to Washington and state police files, record checks, etc. are all costly. These procedures are needed in the case of serious crimes but are often superfluous in the case of interpersonal misdemeanor cases among acquaintances. The expense is particularly unjustified when such a high percentage of these cases are dismissed due to the lack of interest on the part of the complainant in pursuing the case. When dismissals occur fingerprint records must be retrieved from Washington and the state police, photographs destroyed, etc. Many police departments have revised their operating procedures to avoid arrests where possible and use summonses in their place for the less serious crimes. This procedure saves many of the expenses associated with arrests, but substantial costs are still incurred in presenting the summons to the defendant and in processing the many relevant forms in multiple copies. A dispute processing project could simply receive referrals from police officers prior to the initiation of normal police procedures. Complainants could visit the project's office and have the project contact the respondent to schedule a hearing. The use of police stationery and the threat of arrest would be likely to insure the presence of a high percentage of respondents.

The major advantage which the police would receive from the development of a dispute processing project would be the ability to maintain some control over the case. Under current procedures, the police lose control of a case once a charge is brought. Police dissatisfaction with prosecutor or court processing of cases has often led the police to desire greater control over the case processing mechanisms. In pre-arrest referrals to the dispute processing project, the police can still hold the threat of arrest over the defendant, and thereby retain an option for action with regard to the defendant. While this aspect of project

sponsorship is an advantage to the police, problems with due process and the protection of defendants' rights quickly arise. Recent literature on diversion projects has begun to grapple with the complexities of constitutional rights as they relate to diversion programs.

Presumably, a police sponsored project would result in the department's structuring incentives for officers to refer complainants to the project. Currently, police referrals to projects which are sponsored privately or by non-police governmental agencies have not been vigorous. For example, in New York City, the IMCR Dispute Center originally intended to receive most of its referrals from the police in specified New York City police districts. The project learned, however, that many officers were hesitant to refer clients to the project when they could "make a bust" instead. Officers making arrests receive "collar credit" from the department and their peers which provides prestige and presumably possibilities for eventual promotion or raises. A similar experience has occurred in the other cities studied. The Public Safety Department in Dade County has been the only police department in our sample which appears to very actively make referrals to its local dispute processing project. The source of these referrals is the crisis intervention unit in the department called the Safe Streets Unit. This unit has a "sociological" orientation to the disputes it deals with and officers receive the equivalent of "collar credit" for referrals to the Citizen Dispute Settlement Project in lieu of arrest.[2]

- *Prosecutor Sponsorship*

The Columbus Night Prosecutor Program and its successors in other communities (see case study for listing) have favored sponsorship by the prosecutor's office. The prosecutor's control over charging places him in an advantageous position for diverting cases to dispute processing projects while maintaining the option to still bring charges. The cases reaching the prosecutor have incurred system expenses already if the police have made an arrest or have otherwise devoted considerable energy to the case. Supporters of police referral oppose waiting until a case reaches a prosecutor because of these expenses. Supporters of prosecutor referral feel that it may be superior to wait until cases reach the prosecutor, because presumably many cases which do not belong in the system or the dispute processing project will be eliminated by the time they reach the prosecutor. Others feel that virtually no disputes are

too minor to warrant project processing if they are perceived to be important by the disputants, and these individuals would strongly oppose the notion of waiting until the system discourages certain disputants from pursuing their case before making referrals to the dispute processing project.

Specific aspects of prosecutor sponsorship need little discussion here since the Columbus project and its close relatives have demonstrated that the procedure is workable, at least for the cases reaching the prosecutor. The issues of presumed bias toward the complainant, stigmatization, etc. are of course still viable. Even though the projects work in the sense of processing large caseloads with relatively low cost and apparent low rates of return to the system, these projects may still not be optimal when compared to other mechanisms.

- *Court Sponsorship*

The Miami Citizen Dispute Settlement Project is sponsored by the Administrative Office of the Courts. The primary advantage of court sponsorship is the close structural ties possible with criminal justice agencies. The Prosecutor's Office is likely to cooperate with the project in referrals simply due to the reciprocal power held by both the courts and the prosecutor. The problem of presumption of bias in favor of the complainant is also likely to be reduced somewhat, due to the court's traditional image as a neutral forum. On the other hand, the problem of possible stigmatization of the defendant is likely to increase if the court serves not only as the sponsor but also the primary referral source since the defendant will typically already have been processed by both the prosecutor and the police before reaching the state of referral from the clerk or the bench. In the case of the Miami project, the primary source of referrals is the prosecutor's office, and thus sponsorship by the courts does not result in most referrals being from the court. In Boston, on the other hand, the project is sponsored by a private organization and yet receives the majority of its referrals from the court.

- *Summary Comments*

In the final analysis, a great many factors will inevitably determine the choice of an organizational sponsor for a dispute processing project. The discussion above highlights some of the

issues which should be considered by program planners in their choice of an institutional home for new projects.

2.3 Project Location

To a large extent, the physical location of the project is closely related to the nature of its sponsoring agency. Columbus is both physically and administratively tied to the prosecutor's office, Miami to the court. The remaining projects are operated by independent agencies and are located in independent facilities--Boston in a storefront near the court, Rochester in an office building near the court, and New York in an office building in Harlem, some distance from the court. San Francisco, which expects to deal predominantly with police and community referrals, plans to locate its community Boards in informal settings within the neighborhood.

An independent location reinforces an image of neutrality, conveys a more relaxed informal atmosphere which may be more conducive to dispute resolution, and, if the court or prosecutor is overburdened or understaffed, avoids pressures to become involved in routine case handling tasks.

The advantages of an official location are also compelling: ease of access to referrals, immediate communications with court personnel, an atmosphere which reinforces the serious nature of the mediator's task, and greater opportunity to institutionalize project procedures into daily court routine.

Obviously, any project should be readily accessible to its clientele, and, ideally, can be located in close proximity to its major source of referrals. However, given proper access (and assuming adequate official space is available), the issue of independent vs. official location presently appears to be an open question.

2.4 Case Criteria

A number of factors need to be taken into account in devising case criteria for a dispute settlement project. These factors

include (1) the nature of the relationship among the clients, (2) the level of seriousness of the offense, (3) the role of civil vs. criminal matters, (4) the inclusion of domestic matters, and (5) the inclusion of matters which are essentially not amenable to mediation but are useful to the system, such as bad check cases. Each of these factors will be discussed in turn.

2.4.1 The Nature of the Relationship Among Clients

All of the projects reviewed in this study have tended to place primary focus upon disputes occurring among individuals with an ongoing relationship of some sort, whether as relatives, landlord-tenant, employer-employee, neighbors, etc. Sander points out in his Pound Conference paper that in the case of ongoing relationships there is "potential for having the parties, at least initially, seek to work out their own solution," and that this approach "facilitates a probing of conflicts in the underlying relationship, rather than simply dealing with each surface symptom as an isolated event".[3] Mediation among strangers is clearly more difficult because the victim, if he has a valid complaint, has little more to compromise with the respondent than he has already. Victim restitution projects have been established to deal with these situations but generally rely on an adjudicated verdict of guilt prior to bringing the two parties together. Thus, a guideline of some form of ongoing relationship seems advisable. Johnson et al. (1977) in their monograph Outside the Courts have stressed the values of ongoing relationships as a critical feature for successful arbitration. They point out that "one study [by Sarat (1976)] determined that when a party has the choice of arbitration or adjudication, the most relevant factor in the decision is the relationship of the disputing parties. Where there has been a significant past relationship or anticipation of a continuing future relationship, arbitration is more likely to be selected. Responses by former disputants indicated that in four times as many arbitrated cases as adjudicated cases it was easier for the parties to get along with each other in the future."[4]

2.4.2 The Level of Seriousness of the Offense

Citizen dispute processing projects can clearly deal with a wide range of offenses from minor grievances which would normally have

never surfaced to the attention of the criminal justice system to serious felonies. The various projects have differed significantly in the types of disputes they feel are appropriate. The New York project has begun to take referrals on felony cases from the New York Criminal Court and is establishing a branch office in Brooklyn which will process only Criminal Court referrals from that borough. On the other hand, the San Francisco project intends to process cases which might otherwise not have been referred to the criminal justice system due to hesitancy on the part of the complainant to involve the respondent in the criminal justice system.

The experience of the various projects seems to be that mediation is effective for a very broad range of offenses as long as the disputants have an ongoing relationship and a stake in coming to some resolution. This finding makes sense when one considers that the difference between a minor assault and a very serious felonious assault often involves the accuracy of the assailant's aim in striking the victim rather than the degree of animosity in the relationship. Further research is needed to determine the limits in the seriousness of offenses which are amenable to mediation. The Institute for Mediation and Conflict Resolution has had success in mediating cases as serious as rape, robbery, burglary, kidnapping, grand larceny, and a second degree assault. To the degree that complainants were deeply involved with the defendant and wished to reconcile with him, the process seems to have been successful. One can clearly envision many serious crimes among people with ongoing relationships for which mediation would seem extremely unsatisfactory to the complainant. As Danzig points out in his work on community moots, "Due process considerations, danger, the need for professional training and dispassionate commitment all make community handling of 'true crime'--crime with victims, crime which provokes a passion for retribution and a need for extended incarceration of the 'criminal'--a poor subject for community controlled decentralization."[5]

In any event, most projects will no doubt want to perfect their skills in the processing of relatively minor disputes before moving on to felonies. Time would be required to develop mediators with sufficient skill to handle the extreme emotional complexities likely to arise in many felony cases. Thus, minor disputes involving violations of ordinances, misdemeanors, and some matters which would have never reached the criminal justice system seem appropriate for beginning Neighborhood Justice Centers.

2.4.3 The Role of Civil Vs. Criminal Matters

All of the projects which were studied process civil matters as well as criminal matters. The Miami project categorizes approximately 25 percent of its caseload as being civil rather than criminal in nature. The Boston Urban Court Project is currently soliciting Small Claims Court matters, and the Columbus project has developed a working relationship with the local Small Claims Court. In Columbus normal procedures for Small Claims Court cases involve an initial interview at the court, then a mediation session, and finally the hearing of the case by a referee. If disputants have the Night Prosecutor Program mediate their case and are unsuccessful in resolving the matter, the Small Claims Court will waive the requirement for the initial interview and the mediation session at the Small Claims Court and proceed directly to place the case on the docket of one of the referees for a hearing.

The question of what limits to place on the size of civil matters referred for mediation is a difficult one. Sander has discussed the issue of using the amount in dispute as a guidepost for selecting a dispute resolution forum, and points out that "when one considers the lack of rational connection between amount in controversy and appropriate process" one can appreciate the problems that have occurred in trying to allocate cases by this rubric.[6] Sander notes that, "quite obviously a small case may be complex, just as a large case may be simple."

A common thread tying together the various civil matters processed by the projects is the existence of an ongoing relationship between the disputants discussed earlier. The projects have been willing to process cases in which a person has a complaint against his corner store owner. In these cases the two disputants may have known each other for years and will continue to have contact. A similar dispute regarding merchandise or services arising out of a complainant's contact with a large department store would not be acceptable because the respondent for the complaint would, of necessity, be an institution rather than an individual. Many civil matters among relatives, neighbors, and acquaintances, such as failures to pay back debts or deliver on promised services, can quickly become criminal matters. The confrontation with the acquantance on the "civil" matter can often culminate in relatively uncivil behavior categorized by the police as criminal.

A project's choice of whether to accept civil cases, and if so, what proportion of the caseload to devote to such cases, will be determined in part by the project's funding source, its sponsoring agency, etc. It should be noted that both of the projects sponsored by criminal justice agencies, i.e., Miami and Columbus, have still been willing to process civil cases when the cases seemed amenable to mediation.

2.4.4 The Inclusion of Domestic Matters

The degree to which projects process cases involving divorce issues such as custody, visitation rights, support payments, etc. is dependent upon the project's relationship with the local court. In New York City, for example, the IMCR project will agree to mediate various divorce-related matters, but is not allowed to arbitrate these matters because of the Family Court's desire to retain control over these cases. The Family Court in Rochester is very interested in the possibility of the project arbitrating divorce-related issues, and negotiations are currently being conducted between the project and the Family Court which may lead to the project extending into this area. Many assault cases received by the various projects involve married couples in the process of divorcing. The Miami newspapers have provided extensive coverage of the Miami project's efforts in mediating assaults between spouses, and the Family Court has expressed interest in working closely with the project.

In short, the inclusion of domestic matters, such as the terms of divorce actions, differs somewhat among the projects. If appropriate authority can be delegated to dispute processing projects, domestic legal matters seem to be quite well suited for their form of case processing. Sander points out the need for experimentation in this area and states, "Where there is a breakdown of the family as a result of death or divorce, the courts have customarily become involved and it is here that alternative dispute resolution devices, particularly mediation, need to be further explored."[7]

2.4.5 The Inclusion of Matters Not Essentially Amenable to Mediation

Citizen dispute settlement projects at times provide a useful forum for the processing of non-mediational cases. For example, the Columbus project processes over 10,000 bad check cases per year, and these cases comprise 61 percent of the project's caseload. The cases are not "mediated" in the strict sense of the word. Merchants will arrive on bad check case evenings (Monday and Wednesday) with a list of individuals who have provided them with bad checks. The individuals are assembled in hearing rooms and are called to the front to meet the merchants and explain the absence of money in their account. The complainant in these cases is often simply a representative of a large chain store, and has never had any form of relationship with the respondent, except perhaps by mail. The issues at hand tend to be factual, e.g., "You bought the hibachi, didn't you?", "Where's the money?", etc., and very little give and take of the type characteristic of true mediation sessions is likely to occur. The reason for the inclusion of this type of case in an otherwise "interpersonal" dispute processing program is straightforward. The service is useful and efficient for the prosecutor's office, and the prosecutor is the sponsor of the project. Whether this type of case processing influences the public's view of the project adversely is difficult to determine. It is possible that especially poverty-stricken individuals would view the project as an arm of the wealthy and would be hesitant to bring their own disputes to the project after they or a friend had their bills collected by the project. Intake cases observed during the site visit did not support this negative image, however, and many very poor individuals were observed bringing in highly personal minor disputes to the program for mediation. A sample of opinions of others in the city would, of course, be needed before this anecdotal evidence should be accepted as of value.

Projects will need to consider the likely impact on their image resulting from processing cases such as the bad check cases in Columbus. Cases in which institutions serve as the complainant against citizens may well adversely affect a project's reputation, particularly among the underprivileged. Empirical work is needed to test if this is really the case. Adding a component which enables the individual citizen to reciprocally bring complaints against institutions may at least even the score, although the role of "mediation" in either type of case where institutions are one party and a citizen is another seems questionable. In fact,

unequal power relationships of any sort can be troublesome in mediational programs. Johnson et al. (1977) in their monograph Outside the Courts point out that other forums such as newspaper consumer complaint columns, media hot lines, ombudsmen, etc. may be particularly useful in the case of unequal power relationships among disputants.[8] They note that "it is feasible, and possibly useful, to conceive of these institutions not as mechanisms which actually resolve disputes but as ones which facilitate the negotiation process by equalizing the bargaining power of the contending parties." For example, in regard to media complaint centers Johnson et al. note, "Their ability to publicize arrogant behavior on the part of commercial enterprises tends to neutralize the bargaining advantage such enterprises traditionally enjoy in their relations with individual consumers."

2.4.6 Summary Regarding Case Criteria Issues

The preceding discussion simply provides some guideposts regarding the development of case criteria. Each project will need to thoughtfully consider the types of cases it wants to process in light of its vision of the possible services it can render to local citizens, and in light of the constraints placed upon it by its institutional affiliations and referral sources.

2.5 Referral Sources

Section 2.2 on "sponsoring agencies" has also provided considerable discussion on the advantages and disadvantages of various referral sources. As that discussion indicated, a continuum of referral sources is represented among the programs reviewed, beginning with San Francisco which is the strongest preventive model and will primarily accept its referrals from the community and the police, the continuum includes primary referrals from the prosecutor's office in Columbus, the Clerk's Office in Rochester and finally the entire spectrum of court-based referral sources in Boston.

Earlier intervention clearly implies lower immediate costs to the system to the extent that cases diverted would have proceeded on to the next stage in the criminal justice process. Even if the

case might not proceed on the basis of the instant offense, if it is believed that the behavior left unchecked is likely to escalate and motivate future criminal incidents, cost savings may still be involved--if not calculable--in the long term.

It should be noted, however, that in some communities cases referred by the police may involve a large percentage that would not be likely to result in arrest, cases referred from the prosecutor may be those least subject to prosecution, and so forth. In Boston, for instance, the project has not been able to negotiate a referral arrangement with the police due to union concerns of reduced overtime benefits from attending court sessions. Should access be gained to this source of referrals, it is likely that the cases will be those which might present officers with difficult situations that would only at some future point result in arrest.

Research is needed on the trade-offs involved in processing cases which never would have received substantial criminal justice system attention, versus devoting resources primarily to cases firmly caught up in the system. Sander discusses issues relating to the surfacing of cases which normally are not processed by the criminal justice system, and states "whether that will be good (in terms of supplying a constructive outlet for suppressed anger and frustration) or whether it will simply waste scarce societal resources (by validating grievances that might otherwise have remained dormant) we do not know." Sander notes that "the price of an improved scheme of dispute processing may well be a vast increase in the number of disputes being processed."[9]

Given the multiplicity of goals inherent in the concept of neighborhood justice, the choice of referral strategy will be a reflection of a project's particular objectives, as well as the access routes permitted that project by official criminal justice agencies. However, a model which intervened at all stages in the pre-trial process from informal citizen complaints through arraignment may well represent a strategy that allows for the maximization of both citizen needs for a dispute resolution forum and system needs to divert cases which are inappropriately consuming criminal justice system time, facilities, and personnel.

2.6 Intake Procedures

A number of issues are relevant to the construction of intake procedures including (1) the degree to which the project actively pursues the complainants and encourages their participation in the project, (2) the use of threats to respondents for failure to appear versus the use of voluntary agreements to appear at hearings, (3) the use of cooling off periods prior to the conduct of a hearing, and (4) the use of signed agreement to participate in a hearing prior to the conduct of the hearing. Each issue will be discussed in turn.

2.6.1 The Degree of Active Pursuit of Complainants

Once clients have been referred to the project from whatever referral source, the project has the choice to actively pursue complainants or to rely on the complainant to appear and participate in the project. Many projects experience striking attrition between referral and the conduct of a hearing. For example, the IMCR project in New York received 1,657 referrals during the first ten months of operation. In 662 cases the referred complainants decided not to take further action and appear at the Dispute Center following the referral. Furthermore, 146 additional complainants agreed to have a hearing scheduled and then decided not to appear. These data can be interpreted in a number of ways. Failures on the part of complainants to pursue a case can simply indicate that they have been able to resolve the dispute, with the pressure from the project on the respondent perhaps facilitating that resolution. The IMCR project has conducted an informal study which indicates that this type of resolution can occur in many cases. The lack of complainant follow-through on a case may also indicate that complainants are wary of institutional attempts to solve their problems and have decided to avoid becoming too entangled in projects which intrude on their life. Rigorous data are needed to determine the causes for case attrition at the various stages of case processing. If cases are actually being solved outside of the project, active pursuit of referred complainants would be an invasion of their right to solve their problems privately. If, on the other hand, case attrition is caused in large part by disaffection with institutions in general, conscientious efforts to encourage complainants to participate in the project such as phone contacts or personal contacts may be in order.

2.6.2 The Use of Threats for Failure to Appear Vs. Voluntary Requests of Respondents

A second issue involving project intake procedures is the choice to threaten respondents for non-appearance and participation in the project versus requests for voluntary participation by the respondent. Projects using binding arbitration as their means for resolving disputes such as those in Rochester and New York must rely upon the voluntary agreement of respondents to participate. No citizen dispute projects which deal with criminal matters have compulsory arbitration. Some courts, such as those in Pennsylvania, have adopted compulsory arbitration as the means for settling relatively small civil claims. An arbitration project can conceivably use threats of further action in the criminal courts by the complainant to persuade the respondent to appear at the project and learn about the arbitration program, but cannot force the respondent to agree to arbitration.

The Miami and Columbus projects and the Rochester pre-warrant hearing project of the clerk's office all use very threatening letters to compel respondents to appear for mediation with the complainant. The typical closing line in the letters is, "Failure to appear may result in the filing of criminal charges based on the above complaint." Official stationery is used and the district attorney or a similar official signs the letter.

The Boston project and the newly forming San Francisco project are mediational projects, which stress the importance of the voluntary participation of the respondent. The Boston project strongly urges respondent participation, but requires the respondent's signature agreeing to participate in a hearing.

The value of the various approaches needs to be researched. Preliminary examination of the available data from the projects indicates that voluntary compliance can at times produce low cooperation from respondents.

2.6.3 The Use of Cooling Off Periods Prior to Hearings

None of the six citizen dispute settlement projects employed cooling off periods prior to the conduct of hearings. Projects typically hold hearings seven to ten days after the complaint is received. The Rochester pre-warrant screening project operated by the clerk's office in Rochester (described in the "referral source" section of the Rochester case study) does employ a cooling off period. Misdemeanor complainants presenting complaints at the clerk's office are informed that a pre-warrant hearing will be scheduled to be held three weeks after the date of the complaint. Complainants are informed that the clerk's office will attempt to arrive at a resolution between the complainant and the respondent at that time. The pre-warrant hearing project cooling off period has resulted in a high rate of withdrawal of complaints by complainants during the three week period while they are awaiting the hearing. Many other complainants simply do not appear at the hearing, and thereby cease prosecution of the complaint. The hearing officer for the project estimates that 60-65 percent of all complainants fail to pursue the complaint to the time of the pre-warrant hearing. This amounts to a sizeable number of complainants since in one six-month period in 1976 the project processed over 1,600 complaints.

The question arises with a cooling off period policy whether the disputes are successfully resolved outside of the project or the complainant is simply disgusted with institutional treatment, and sees the long delay prior to the hearing as evidence that the clerk's office has little to offer in the way of thoughtful and timely assistance for their problem. Research is needed to determine which of these interpretations of complaint attrition is the more accurate one.

2.6.4 The Use of Signed Agreements to Participate in Hearings

As was noted above, arbitration projects by definition must obtain signed agreements from their participants to join in hearings. Mediation projects do not have this requirement, and yet the Boston project has chosen to request signed agreements as symbols of the disputants' willingness to seriously deal with the issues of their dispute. Newly developed projects should consider the merits of

this type of procedure as a way of enhancing the participants' perception that they are voluntarily entering into a serious attempt to resolve their differences with the opposing party.

2.7 Resolution Technique

A wide variety of issues arise in the selection of resolution techniques and many combinations and sequences of techniques are possible. This section will discuss the merits of mediation versus approaches using a combination of mediation and arbitration. The use of social service assistance will also be discussed, and characteristics of hearings such as the number of hearing officers used, the use of written agreements, and time allotted per hearing will be explored.

2.7.1 Mediation Vs. Combined Mediation and Arbitration

Four of the projects which were studied employed mediation as the technique for the resolution of disputes while the remaining two (Rochester and New York) employed combined mediation and arbitration. Most practitioners and theoreticians seem to be in agreement that disputes should be first dealt with by mediation, even within a session that may terminate in an arbitrated decision. As part of the mediation attempt, an opportunity is typically provided for both parties to simply air their grievances, usually with the complainant speaking first. This phase of the mediational session closely approaches conciliation in which parties are simply given the opportunity to state their problems and possibly negotiate a solution on their own without third party assistance.

If the conciliatory effort does not result in an agreement among the parties (as it often does not because the parties typically use the opportunity to vent pent-up emotions), then the mediator takes the role of a third party neutral and may ask questions to help clarify issues. A mediator will typically try to identify the areas of agreement between parties and isolate the specific issues under contention. Suggestions may be made regarding possible solutions and individual caucuses may be held with the complainant and the respondent to better determine the parties'

"bottom line" position on a settlement. Disputants often find it easier to indicate possible concessions directly to a mediator without the other disputant present because no loss of face is involved. Compromises directly in the presence of the other disputant may be perceived by both disputants as a sign of weakness. An insightful mediator can work these "bottom line" settlements into the conversation in a fashion which makes them appear to be trade-offs to concessions made by the other party rather than outright concessions.

A number of the projects which solely employ mediation attempt to work toward written agreements regarding the dispute. Miami and Boston both employ written non-binding agreements as a way to affirm the existence of an agreement, and the parties sign the agreement in cases where an agreement is reached. The San Francisco project anticipates that it will use a similar approach but with unsigned agreements. The Columbus project uses mediation but does not use written agreements as the culmination of resolutions unless the parties request them. The project feels that the non-enforceability of the written agreements makes their use somewhat deceptive, because the project is providing an illusory contract which cannot be enforced if violated. If parties request written agreements, the hearing officer will write up the agreements but the project will not keep a copy on file.

Projects using mediation employ different methods to increase the probability that the agreements will be maintained. The Miami and Columbus projects make it clear to the disputants that criminal charges can still be filed if the dispute continues. The Columbus project generally keeps a filled out charging instrument in cases in which the offense was clearly criminal and prosecutable. The respondent is made aware of the fact that the charge can be easily activated. The Columbus project had a policy in the past of informing respondents who were not prepared to come to a reconciliation with the complainant or who were unlikely to maintain an agreement that they were on "prosecutor's probation" for the coming sixty days. If the agreement was broken, charges might be brought against them. This policy is less common now in the Columbus project because of the project's interest in avoiding the sham of an unenforceable threat. In actuality "prosecutor's probation" had no independent legal force, and the threat of filing a criminal complaint "stands more on the merit of the repeated offense than on the violation of the probation agreement".

The Boston project uses a combination of threats of criminal justice system action, as is embodied in the return to the court in bench referral cases after ninety days to indicate whether the agreement is still in force, and peer pressure. The mediation panels are made up of community members who presumably might be able to pressure the parties to maintain the agreement. The Rochester and New York projects also use community mediators, but the use of only a single mediator in Rochester, and the vast size of the jurisdiction in New York mitigate against any meaningful community pressure in most cases. This limitation is likely to apply to Boston to a large degree also. The San Francisco project plans to employ peer pressure as its primary mechanism for encouraging the maintenance of agreements. The case study presented in Chapter 3 of this report discusses the project's views on peer pressure as a social control mechanism.

Arbitration projects typically engage in the same steps at hearings as the mediation projects, moving from conciliation to mediation. These projects go the additional step of imposing arbitration agreements upon disputants who fail to arrive at agreements during the mediation phase of the hearing. Furthermore, mediated agreements which are arrived at are converted into arbitrator's awards for the sake of their future enforcement. In these cases the agreement only includes those points arrived at in the disputants' own resolution.

Arbitrator's awards are enforceable in the civil courts, and the majority of states have "modern arbitration legislation" which provides the legal structure for the enforcement of arbitrated agreements. The typical procedure for enforcing an arbitrator's award involves making a motion to the civil branch of the court to confirm the award. If confirmed, this motion is followed by a motion for a specific judgment (in the case of monetary awards) or a contempt of court action in the case of behavioral agreements. Typically the staff of projects using arbitration as a resolution technique will assist a disputant in confirming an arbitrator's agreement by filling out the proper forms. In New York City the court has agreed to waive the normal fees for persons enforcing arbitration agreements arising out of the Institute for Mediation and Conflict Resolution Dispute Center's cases.

Sander has noted an interesting problem in the combined conduct of mediation followed by arbitration, and states, "There is an obvious

difficulty if the mediator-arbitrator is unsuccessful in his mediational role and then seeks to assume the role of impartial judge. For effective mediation may require gaining confidential information from the parties which they may be reluctant to give if they know that it may be used against them in the adjudicatory phase. And even if they do give it, it may then jeopardize the arbitrator's sense of objectivity. In addition, it will be difficult for him to take a disinterested view of the case - and even more so to appear to do so - after he has once expressed his views concerning a reasonable settlement."[10] Sander argues that a better procedure is to use a mediational phase followed by an arbitration phase conducted by a different person or persons in cases which need to go to arbitration. Sander notes that "the use of separate personnel, though perhaps more expensive and time-consuming, makes possible the use of individuals with different backgrounds and orientations in the two processes."

The problem of conflicts in the mediator's and arbitrator's role may be blunted in cases in which very few cases go to arbitration. For example, in the IMCR project in New York 95 percent of the cases involve mediated settlements with only the remaining 5 percent going on to an imposed arbitration agreement by the hearing officer. The Rochester project, on the other hand, has similar project procedures and yet 40 percent of the cases require imposed arbitration. The issue of the potential counterproductive aspects of using the same personnel for both mediation and arbitration needs to be explored empirically.

An additional interesting question is the degree to which the threats by some projects to file charges if resolutions are broken amount to de facto arbitration, but with criminal rather than civil remedies as the enforcement device. If in fact the disputants perceive the agreements which are reached in these projects to be "criminally" rather than "civilly" binding then the question arises of which type of enforcement mechanism is superior. Many supporters of civilly-enforced arbitration argue that even if mediation with threats of criminal prosecution results in "perceptual arbitration", criminal enforcement of the agreements has many drawbacks. The criminal courts do not provide restitution to the complainant but simply punish the defendant in the name of the state. The criminal courts stigmatize the defendant in ways that civil enforcement does not. And civilly enforced arbitration awards remove cases from the heavily overburdened criminal justice system through the waiver of prosecution by complainants agreeing to have their dispute processed through arbitration.

In summary, a great many provocative issues are involved in the choice of dispute resolution mechanisms. Numerous additional mechanisms are also available and appropriate for certain types of disputes, e.g., ombudsmen, fact-finders, and, of course, adjudicators. Research is needed to help with the decision of which technique or combination of techniques is most useful for the types of disputes likely to be processed by Neighborhood Justice Centers. A sequential application of mediation and arbitration seems to have promise, and the Rochester case study illustrates how one jurisdiction has combined these two approaches in a pre-warrant hearing project under the sponsorship of the clerk of court and a privately sponsored arbitration project.

2.7.2 Social Service Assistance as an Adjunct to Hearings

Many of the projects have employed social workers to assist disputants in receiving social services. The New York and Miami projects have full-time social workers on their staffs while the Columbus project uses the services of graduate school students in social work from nearby Ohio State University. In each project a certain proportion of cases never reach the hearing stage because the social work staff is able to refer the disputant to a social service agency which is able to resolve the disputant's problem. In other cases the social work staff provide follow-up services after hearings. These referral processes will be discussed in Section 2.10.

2.7.3 Characteristics of Hearings

Project hearings vary on a number of dimensions. Some projects use panels of mediators (e.g., Boston, New York and San Francisco) while others use single mediators (e.g., Rochester, Miami and Columbus). These mediators may also vary greatly in training, and the following section discusses these characteristics. Similarly, the use of written agreements varies across the projects. The time allotted for hearings also varies, with the Miami and Columbus projects generally holding hearings for approximately thirty minutes and the remaining projects holding hearings for approximately two hours each. Details of these variations are presented in Chapter 3 of this report in the individual project case studies.

2.7.4 Due Process Considerations

None of the current dispute processing projects studied have experienced due process challenges. The directors of the projects feel that the voluntary nature of the projects limits the likelihood of complaints regarding the lack of due process safeguards in project case proceedings. All disputants are free to have their disputes processed by formal judicial mechanisms and are not required to use the services of the projects. Nevertheless, the degree of coercion of project participants does differ considerably among the projects studied, and some disputants may perceive project participation to be virtually mandatory. These cases may result in future legal attempts to clarify the degree of "perceived coercion" allowable for projects of this sort before due process protections are required. A related issue involves the possible impact upon prosecutorial and judicial personnel of failures to arrive at satisfactory dispute settlements. Consideration should be given to the possibilities for prejudice against respondents resulting from unsuccessful hearings. Most of the current projects provide criminal justice agencies with very limited information regarding the content and outcomes of hearings, and would absolutely resist any attempt to have hearing officers serve as witnesses at judicial proceedings. Projects would consider such attempts to be a violation of the privileged relationships of hearing officers and disputants.

2.8 Project Staff

Table 2.1 presents an overview of the staff organizations of the six projects studied, including the total number of full-time staff, the number of mediation staff, and the titles of other staff categories such as administrative, intake, social work, and clerical. Each case study includes a detailed section titled "project organization" which provides descriptions for the various staff positions and comments on staff turnover. As can be seen from Table 2.1, staff configurations vary widely among projects, with the Boston project having only four full-time staff, while the New York project has ten full-time staff members.

2.8.1 Administrative, Intake and Social Service Staff

Major reasons for staff size variation include (1) the varying needs to supply paralegal intake staff workers at referral sources to process clients. For example, the Rochester project requires only one intake officer at the clerk's office, while the New York project requires three intake workers and a summons court supervisor to process referrals at various agencies. (2) The use of social work staff; for example, the Columbus project uses six social work graduate students for social services, while the Rochester project intake worker also processes social work referrals. (3) The size of administrative and clerical staff varies as a function of the size of the intake, social work and mediation staff.

The importance of selecting highly committed, energetic, and politically sensitive individuals for project administration is difficult to overestimate. Virtually all of the Project Directors have noted that this type of resourceful and industrious person is crucial to project success. An insensitive Project Director, regardless of the type of sponsoring agency, could easily alienate otherwise positively predisposed criminal justice officials, and a highly effective Project Director could potentially win over initially hostile officials. The recruitment of project staff should clearly be conducted with great care, and efforts should be made to locate indigenous leaders with the background and skills appropriate for the operation of the dispute processing project.

The absolute minimum staff configuration for a centrally located Neighborhood Justice Center would seem to require an administrator, intake staff worker and pool of mediators. The San Francisco plan for having three-person outreach office staffs comprised of an office manager, community liaison and organizer, in addition to mediators, provides a model for a community-based project. Projects differ in their perception of the need for legal staff at the Neighborhood Justice Center. Columbus has recently added a full-time lawyer to the staff because other staff felt that legal issues were often raised in hearings requiring the consultation of a lawyer. The New York project, on the other hand, relies on the neighborhood legal aid staff office for legal consultation, and feels that this approach is in keeping with the image of Neighborhood Justice Centers as alternatives to formal legal case processing. The sections in the report on hearing staff qualifications,

intake, referral, follow-up, etc., provide additional details on the type, characteristics, and duties of current dispute processing project staff.

2.8.2 Type of Hearing Staff

The programs discussed in Chapter 3 represent a range of hearing staff models, including lay citizens (San Francisco, Boston, New York and Rochester), law students (Columbus) and professional mediators (Miami). Two additional models not described by these programs but available for consideration include the use of nonlaw-trained graduate students or trained lawyers. Each of these types is discussed briefly below with reference to other factors which relate to the decision regarding the qualifications of hearing staff.

- *Lay Citizens*

Clearly, the use of trained members of the community as mediators is consistent and even requisite in a model of neighborhood justice which seeks to involve citizens in the remediation of community problems often inappropriately brought before the court. The use of lay citizens provides a project with mediation staff who have a vested interest in the welfare of the community and the satisfactory reconciliation of disputing parties. Moreover, the opportunity to educate participating citizens regarding the functions and problems of the court may also serve an important function in altering community perceptions of official justice.

Depending on the nature of the case and the mediator's ability and experience, Boston and New York typically use two or three trained laymen per session. Rochester uses only one per session, while San Francisco plans on a panel of five. Both Boston and New York report that they have found their sessions more balanced and more comfortable for the mediators when more than one participates. The San Francisco model, which will call on panels of five citizens in order to exert stronger peer or neighborhood pressure on the resolution process, may begin to pose questions regarding the sessions' balance of power and clients' concern of privacy. This latter model, however, has yet to be tested.

The primary disadvantages of the use of lay citizens are the monetary costs and process time associated with the management of citizen mediators. Substantial time may be required to develop community support and involve the community in program planning and administration in order to sustain that support and to engender a sense of responsibility and ownership towards the program. An additional commitment of time and resources is required to mount careful recruitment, selection and training efforts that must then be institutionalized to accommodate a turnover rate that may exceed that of a professional staff. Finally, the pool of people to be managed on an ongoing basis is likely to be larger and more difficult to schedule given the part-time availability of most community volunteers. Although lay citizens will not involve substantial salary expense, all four programs reviewed here provided or planned to provide participating citizens with stipends or fees and advocated this policy as an incentive, a token of appreciation, and a means of providing volunteers with expense reimbursement.

The credibility of lay citizens may also be a factor to consider --credibility with the project's major sources of referrals as well as its clients. In Boston, the Presiding Justice of the project's host court expressed initial concern about the potential danger of involving lay citizens in a situation of implicit power. Though these concerns proved groundless (and the project's actions are subject to numerous checks and balances through its affiliation with the court), projects further removed from official scrutiny may need to remain sensitive to this issue. The experiences of the Community Boards in San Francisco will provide an interesting test of this concern.

- *Law or Other Graduate Students*

The use of law students or graduate students of any discipline offers a number of practical advantages. First, a student model offers a contained source of applicants whose availability can be fairly accurately predicted and controlled (particularly if mediation work is offered in conjunction with regular course work as a clinical practice option). Second, mediators can be employed at a wage rate that only need be consistent with other part-time student employment opportunities (and could be offered as a course credit alternative without financial remuneration). Finally, although the training requirements are comparable to those for lay citizens, some, if not all, initial and ongoing training activity might be absorbed by the graduate curriculum.

In Columbus, the single site reviewed here that uses law student mediators, not all of these hypothetical advantages prevail. Law students are involved in the program as mediators, and social work students are available to provide counseling and referral services. All students are paid at fairly modest rates, but course credit and associated classroom training is typically not offered.

A potential disadvantage of drawing upon student populations--specifically to fill mediation roles--is the age of the group involved and their consequent lack of maturity and perhaps sympathy for the community orientation of project efforts. With particular reference to law students, a number of observers have expressed concern that training which emphasizes the development of adversarial skills for the courtroom is inconsistent with the mediational skills required in an informal hearing environment. The result may be an inappropriate reliance on facts and an authoritarian demeanor that may discourage self-initiated agreements among disputants. Recognizing this tendency, the training program in Columbus has begun to place emphasis on the development of human relations skills.

- *Professional Mediators*

In Miami, professionals with backgrounds in a variety of disciplines (including law, psychology, social work) and specialized training in mediation technique, are paid up to $10.00 per hour to hear the project's cases. The primary advantage here is clearly the availability of highly skilled mediation staff from whom the project can demand a level of professionalism and sensitivity not immediately available under a student or citizen model. Potential disadvantages include the costs of retaining professionals (without necessarily benefiting from reduced training costs); the availability of a sufficient pool to cover project needs given their competing professional demands; and the foregone opportunity to establish a strong sense of community justice.

- *Lawyers*

With the exception of those law-trained professionals who participate in the Miami project, the exclusive use of lawyers is not seen in the group of projects reviewed here. The Orlando, Florida project has used this model with some apparent success. Again, the advantages are similar to those that result from the use of

professional mediators. The disadvantages are also similar, with the additional and very serious reservation regarding the inherent adversarial rather than mediational orientation of law-trained persons.

In summary, a number of factors bear on the issue of hearing staff qualifications including the project's objectives, caseload, budget, and the availability of staff support services. While the lay citizen model is not without liabilities, it appears to be a particularly appropriate and timely model viewed in the context of the broad goal of citizen participation in the resolution of community disputes.

2.9 Hearing Staff Training

With the exceptions of New York and Rochester (where the IMCR and the AAA respectively provide training to their own projects), projects viewed have relied--at least initially--on the use of specialized consultants to develop and assist in delivering preservice training to mediators. Boston's Urban Court Program retained IMCR for two training cycles and now is sufficiently confident of internal staff capabilities that IMCR was asked only to introduce the third major session. In Columbus, an educational consulting organization developed the training program and instructional materials, which are now administered by project staff. In Miami, a mediator with training in psychology has recently begun to develop a formal training manual.

Boston and Rochester offer a full forty hours of formal training for new mediation staff. New York exceeds this period at fifty hours, and Columbus offers twelve hours of initial training. In addition to theoretical and practical discussions of mediation and arbitration techniques, training typically includes sessions to orient participants to the criminal justice system as well as project policies and procedures. Role playing and case studies are common methods advocated by projects as is the opportunity to observe and co-mediate sessions with more experienced staff. Students and lay mediators can be expected to require the most extensive training and ongoing supervision. The project case studies in Chapter 3 of this report include subsections on "training" and illustrate the various training methods used by the projects.

2.10 Follow-up Techniques

The Boston, Columbus and New York projects re-contact disputants to determine if the agreement has remained in force following the hearing. Boston re-contacts the parties twice (two weeks and three months after the resolution), while other projects rely on a single contact thirty to sixty days after the hearing. Rochester has not been able to allocate the resources required for follow-up efforts; Miami plans to hire an intern who will initiate a follow-up procedure during the summer.

During the follow-up contact, Boston staff emphasize the desirability of restricting the inquiry to the general satisfaction of the disputants. Rather than determine whether a party has adhered to each specific letter of the resolution agreement (and thereby perhaps cause the client to dwell unnecessarily on a part of the agreement which may have been overlooked), the parties are asked whether their overall relationship with one another has improved and whether they were satisfied with the resolution process.

Typically, if a former complainant is dissatisfied with the progress of the resolution, the respondent is called and encouraged to adhere to the terms of the agreement. In some cases, the project may intervene and offer additional mediation or social referral assistance. The use of the courts to enforce agreements or resolve breakdowns varies by project. In Columbus, by virtue of the project's affiliation with the prosecutor, charging material is prepared prior to the hearing. Should the agreement dissolve, the prosecutor may consider filing the case. In Boston, where the majority of the referrals come from the bench, cases are continued for ninety days. If the agreement breaks down during this period, the court may take official action when the case is reviewed for dismissal. In Miami, no record of the case has typically been held by the prosecutor; however, procedures may be instituted to maintain cases on file in order to facilitate later action.

In both Rochester and New York, agreements may be enforced by making a motion to the civil branch of the court to confirm the arbitrators's award. If confirmed, this motion is followed by a motion for a specific judgment in monetary awards or a contempt action for behavioral agreements. Project staff in both Rochester

and New York will assist disputants in filling out the required affidavit and in New York court fees are waived for project cases.

The use of either civil or criminal court sanctions has been rare across all projects; problems arising from apparent breakdowns in agreements are normally resolved through renewed project contact and, where appropriate, the threat of court action.

Clearly, follow-up contact is an important function of a dispute processing project--both to monitor project achievements in terms of continuing client satisfaction, and to identify needs for further mediation or social service assistance. Ideally, a project's role in enforcing non-binding agreements which may deteriorate following a hearing would be restricted to attempts to resolve the problem informally. Preparing charging documents or using information from mediation sessions to support official criminal court action is inconsistent with the neutrality associated with the neighborhood justice concept and may raise due process concerns. Referrals to appropriate agencies (including small claims and criminal courts or social service agencies) are, of course, called for when project resources alone cannot resolve the problem.

2.11 Costs

The projects reviewed differ substantially on the volume and costs of referrals and hearings. Table 2.2 on the following page arrays projects in approximate order of costs and summarizes those elements presented in the larger matrix (Table 2.1) which appear to relate to higher or lower case expenditures. Although the number of projects is clearly too small to draw any firm conclusions, the following relationships are suggested by these data.

- The sponsorship of a private organization (which also typically involves a physical location independent from the court) describes the administrative arrangement in the three higher cost projects. To some extent, this may be an artifact of accounting procedures, as it is likely that the indirect costs of an official sponsor may not be fully attributed to a project's budget. In view of the opportunities to share facilities, materials, and personnel, these

Table 2.2

Referral and Hearing Costs and Related Attributes

Site (No. Referrals/ No. Hearings)	Cost Per Referral	Cost Per Hearing	Sponsor	Primary Source of Referrals	Resolution Technique	Hearing Staff	Number Per Session	% Repeat Hearings	Hours Per Session	Follow-up Contacts	Hours Mediation Training
Boston (350/283)	$300.00	$372.00	Private	Bench	Mediation	Citizen	2-3	16%	2.0	2	40
New York City (3433/649)	79.00	416.00*	Private	Summons Ct.	Arbitration	Citizen	1-3	2%	2.0	1	50
Rochester (663/457)	98.00	142.00	Private	Clerk	Arbitration	Citizen	1		1.75	0	40
Miami (4149/2166)	36.00	69.00	Court	Prosecutor	Mediation	Profes-sionals	1		.5	0	
Columbus** (6429/3478)	6.69	12.36 (20. incl in-kind costs)	Prosecutor	Prosecutor	Mediation	Student	1		.5	1	12

* Based on recent caseload increases, the project projects a reduction in hearing costs to $270.

** Figures presented are for interpersonal disputes only. The Columbus project also processes many bad check cases, but procedures for these cases are non-mediational.

indirect costs are likely to be substantial, decreasing the apparent economies of an official location.

- Obviously, the volume of referrals and cases heard is an important influence on case costs. These measures, in turn, are affected by a number of variables, including court caseload, point of intervention, project location, nature of cases referred, and the amount of official authority attached to the referral.

- Although Table 2.2 suggests that the deeper cases penetrate the system prior to referral, the more costly the diversion, this variable may be only a proxy for sponsor, and in turn, the staff required to secure project referrals. Both officially sponsored projects have no need to allocate substantial staff time to the screening/intake function as referral mechanisms are fully integrated with the normal duties of the prosecutor's staff. Conceivably, however, later referrals might result in fewer cases available to project staff and therefore higher costs. In Boston, for example, both referrals and cases heard are significantly lower than other projects serving comparable populations--a situation which suggests that the project's access to cases is restricted by its reliance on bench referrals. Moreover, since cases referred from the bench must reappear at the end of a continuance period, so also must project staff, thereby increasing the project's responsibility to a given case.

- Projects which use the arbitration technique are among the higher cost programs. However, these are also among the projects which employ citizen mediators and offer more extensive pre-service training. The key element here, then, may be the type of mediation staff and associated administrative expense.

- The high cost projects also devote a greater amount of time to the hearing, re-hearing and follow-up process, and frequently use panels rather than a single mediator. Boston's highly sophisticated management information system is also likely to add some additional costs to that project.

Unfortunately, it is difficult to relate these differences to project outcomes in order to derive measures of cost-effectiveness. Although rates of resolution breakdowns are available, since these data are not uniform across sites, any differences presently observed can partially be attributed to variations in the definitions of outcomes and the type of follow-up effort. The development of uniform reporting categories and procedures would do much to provide projects with useful management information and would facilitate future comparative analyses.

Serious consideration should be given to the possibilities for future institutionalization in the city or county budgets when initial project budgets are planned. The only dispute processing project studied which has been fully institutionalized by its local government is the Columbus Night Prosecutor Program. As can be seen from Table 2.1, this project has the lowest overall budget and yet the highest caseload of all of the projects reviewed. Given the serious current problems with city and county government finances, every effort should be made to develop projects which are as inexpensive as possible. Possible mechanisms for cost savings include the use of volunteers, efficient coordination with criminal justice system screening staff to limit the need for project supported staff at referral sources, the use of graduate students on field placements to perform some office functions, the use of free public or private facilities for hearings, etc. Highly expensive projects are likely to face great difficulties in receiving continuation funding from local sources, and if such funding is available it is likely to be a fraction of the project's original budget necessitating the economical modifications suggested.

2.12 Evaluation

A number of issues need to be considered in developing evaluations of Neighborhood Justice Centers, including means of collecting data on project development, processes, and impact, and also the potential contribution of project evaluations to the resolution of the many significant general research questions relevant to Neighborhood Justice Centers. Each of these issues will be discussed in turn.

2.12.1 Data Relating to Project Development

Neighborhood Justice Centers exist in very complex institutional environments and, of necessity, have many constituencies. Community agencies, city government, the police, prosecutor, court, and general community members all have a vested interest in aspects of Neighborhood Justice Center functioning. The history of the dispute processing projects studied for this report tends to be complex and involve intricate interactions among the various public agencies and community members. Section 1 of each case study contains a discussion of program development, including the project planning phase, grant processing, and early implementation. Data for these reports were reconstructed from the memories of individuals who participated in project development and from limited written records.

The systematic collection of data on the development of new Neighborhood Justice Centers would be useful to aid potential replicators in understanding the types of obstacles likely to hinder project development and ways to overcome these obstacles. The data would also provide insights into how public agencies and community members interact in project development and might provide guidance for strategies for community involvement in other jurisdictions.

If sufficient funds were available, it would be useful to conduct a participant observation study in which a researcher was given the opportunity to observe the major aspects of the project as it developed. This would include initial project planning contacts with governmental agencies and funding sources, planning meetings in which the project's design and policies are developed, and attempts of the project to recruit staff and mediators, advertise the project's availability to referral sources, and begin to process cases. The value of these data to other communities would of course have to be weighed against the potential intrusiveness of the evaluative process. To the degree that the evaluator could provide the project with timely reports of its accomplishments and problems, the evaluation might provide useful feedback to the project on its current policies and strategies and might help to guide constructive changes in the project's formation.

2.12.2 Data Relating to Project Processes

Every project should collect ongoing data on project caseflow, case characteristics, personnel allocation, etc. to enable the project to monitor its achievements and problems. As an example, the Boston Urban Court Project has developed a relatively comprehensive management information system. The system enables the project to develop comprehensive monthly reports which tabulate referrals by source, source by type of dispute, type of dispute by disposition, outcomes of mediation, recommended social services and the number of sessions held. The collection and tabulation of this information requires roughly two hours per week for each line staff member, four hours per week of supervisory time, one day per week for the overall project director in charge of the project's three components and one day per week for a staff member of the sponsoring organization, the Justice Resource Institute. Data on the demographic characteristics of clients are not routinely collected by the Boston project. The project does solicit information regarding client attitudes toward the project during its routine follow-up calls. Data are also maintained on social service referral activities and reported monthly.

A system similar to that established by the Boston Urban Court Project would enable a project to have timely feedback on its activities and would guide policy adjustments as caseflow, social service referrals, etc. varied. The data provided from such a system would also be invaluable to an outside evaluator seeking to develop a longitudinal analysis of the projects' activities. The other projects studied for this report also had management information systems in use, although the comprehensiveness of the systems varied widely.

2.12.3 Data Relating to Project Impact

In addition to data on project caseflow activities, information would also be valuable regarding the project's impact upon clients, the local criminal justice system and social service agencies. Data on client impact can be obtained in part through the follow-up phone contacts with disputants. Clients can be asked questions regarding their satisfaction with the dispute's resolution, their contacts with social service agencies, the courts, etc. Estimates of project impact on the criminal justice system require that the

project determine the likelihood that project cases would be prosecuted through the various stages of the criminal justice system. This type of prediction is, of course, extremely difficult. In cases where projects receive a large proportion of referrals from the prosecutor or the clerk of court, it may be possible for the staff of these agencies to note the likelihood that the case is technically prosecutable and the likelihood that the agency would pursue the prosecution of the case in the absence of the Neighborhood Justice Center project. The validity of these judgements would, of course, be suspect in the absence of any validating study with a control group of cases which were then not actually sent to the project, but rather allowed to travel their spontaneous course through the system without any special interventions.

Project staff and criminal justice agency personnel may be strongly opposed to the conduct of a random assignment experiment, if they feel that the Neighborhood Justice Center project is critically needed to assist needy citizens and relieve the criminal justice system of its chronic overload. The implementation of such a study in at least a few jurisdictions, however, would be very useful in providing estimates of the savings likely to accrue from dispute processing projects and the quality of the outcomes likely to be received by project and control group individuals. Data on the impact of the project upon social service agencies may be gathered by determining the number of clients referred to specific agencies, the approximate degree of contact of the clients with the agencies, and the proportion of the agencies' caseload contributed by Neighborhood Justice Center referrals.

2.12.4 Central Research Questions Requiring Attention

Numerous examples of research issues requiring attention have been cited in this report. Neighborhood Justice Centers could provide a dramatic improvement in the way "justice" is delivered in America. Answers to some of the important research questions would indicate what procedures are most effective, under what conditions, with what type of staff, in what type of locality, etc. Some of these questions might be addressed by the comparative evaluation of pilot projects now being planned by Institute and OIAJ staff; others might be addressed by the establishment of a national resource center with a capacity to set data collection standards and perform "state-of-the-art" analyses; while still others might be examined

by individual research efforts. The latter studies might focus on rather narrowly defined issues such as resolution techniques or on broader theoretical issues relating to the optimal roles of administrative versus adjudicative procedures in handling a range of minor civil and criminal matters.

Some of the interesting research questions discussed earlier are closely tied to Neighborhood Justice Center operation and might fruitfully be explored in comparative evaluative research and "state-of-the-art" assessments. These questions include:

1. the influence of public versus private sponsorship upon perceptions of neutrality of the dispute processing project, degree of stigmatization of clients, and differential willingness of community members to participate in project development and functioning.

2. the influence of case criteria policies upon the public's perception of the Center, particularly in regard to the processing of non-mediational cases, such as bad check cases, which often involve an institutional complainant and an individual respondent.

3. mechanisms for structuring incentives to encourage police officers to make referrals to the Neighborhood Justice Center, such as the provision of the equivalent of "collar credit" for Center referrals.

4. the causes of case attrition from initial referral to appearance at hearings focusing upon the possible disenchantment of citizens with institutional solutions to their problems.

5. the impact of pre-hearing cooling off periods upon case attrition, and possible causes for this attrition.

6. the influence of the use of public agency stationery and threats of prosecution upon the rates of appearance of respondents.

7. the degree to which strong threats of possible criminal court action result in disputants perceiving their mediated case resolutions to be as enforceable as arbitrated resolutions with civil remedies.

8. the relative merits of conciliation, mediation, arbitration, and combinations of these techniques in resolving disputes.

9. the relative merits of different hearing procedures such as the use of written versus oral resolutions, single versus multiple mediators, long versus short hearings, etc. upon dispute resolution.

10. the possibility of using a two-stage process of mediation and arbitration, when necessary, with different hearing officers in the two stages to avoid constraints occurring when an officer must serve as both a mediator and an arbitrator.

11. the relative merits of variations in types of mediation staff including trained citizens, law students, lawyers, and professional mediators in resolving cases brought before the Neighborhood Justice Center. In addition, data on citizen perceptions of the adequacy of each type of mediator would be valuable.

Larger scale, more basic research questions which might be usefully explored with substantial research programs include:

1. the current availability of dispute resolution mechanisms in communities, and differences in their availability as a function of community size, demographic characteristics, etc.

2. an analysis of trends in the development of non-adjudicatory remedies to problems and the apparent causes for these trends.

3. the appropriate role of lawyers in the resolution of disputes in present day America, particularly given the current reward structure existing in the legal profession favoring large scale litigation. As part of this study, possibilities should be explored for modifications in the training of lawyers and paralegal staff to accommodate the recent move in the United States away from reliance on adjudicatory forums.

4. additional cross-cultural research on the varieties of dispute processing mechanisms of the type being conducted by Johnson, Felstiner, et al.

5. variations in individual definitions of "communities" and the degree to which individuals are interested in having their problems solved within the context of these "perceived communities".

6. the causes for individual differences in readiness to complain about problems and the sociological and psychological consequences of dispute avoidance.

7. institutional and organizational barriers to the development of alternative dispute processing mechanisms, the reasons for these barriers, and possible resolutions of the problem.

8. differences in the public's perception of the civil and criminal justice systems and the impact of these perceptions upon readiness to employ specific forms of alternative mechanisms for dispute resolution.

Many additional research questions have been raised in this paper, and it is clear that the newly forming Neighborhood Justice Centers raise provocative and fundamental issues regarding the relationships of individuals to one another and to their society.

Summary Comments Regarding Neighborhood Justice Center Options

As we have noted in the preface, an attempt to recommend a single unitary model for Neighborhood Justice Centers would be inappropriate due to dissimilarities in the needs and characteristics of host jurisdictions, and the widely differing visions of the purposes Neighborhood Justice Centers should serve. In addition, in reviewing the discussions of the various options for Neighborhood Justice Centers, the lack of reliable empirical data is apparent.

As has been shown, it is possible, however, to identify twelve major dimensions which should be carefully considered in making conscious choices regarding program structure and operation. In

some areas, available findings may suggest the choice of a specific option, while in many others, the trade-offs between advantages and disadvantages will be difficult to calculate. In these latter, more difficult decisions, serious consideration of the complex issues presented here in light of local jurisdictional conditions and goals should provide the basis for a systematic and thoughtful choice of Neighborhood Justice Center components.

CHAPTER 3
CASE STUDIES OF SIX SELECTED DISPUTE PROCESSING PROJECTS

The methods used for studying the six selected dispute processing projects have been discussed in the preface. The project case studies are presented as follows (see Appendix C for project addresses):

A. The Boston Urban Court Program;

B. The Columbus Night Prosecutor Program;

C. The Miami Citizen Dispute Settlement Program;

D. The New York Institute for Mediation and Conflict Resolution Dispute Center;

E. The Rochester American Arbitration Association Community Dispute Services Project; and

F. The San Francisco Community Board Program.

Each case study includes the following sections:

1.0 Introduction
1.1 Program Development
1.1.1 Proposal Preparation
1.1.2 Grant Processing
1.1.3 Program Implementation
1.1.4 Caseload Summary
2.0 Current Operations
2.1 Case Criteria
2.3 Resolution Techniques
2.4 Hearing Staff Qualifications
2.5 Project Organization
2.6 Training
2.7 Goal Achievement
2.8 General Observations

Case Study A:

The Boston Urban Court Program

A.1.0 Introduction

The concept of neighborhood justice practiced by Boston's Urban Court Program consists of three unique but related projects designed to involve the victim, the offender and the community in the administration of justice:

- A Mediation Program uses trained citizens to assist in resolving interpersonal disputes in lieu of formal judicial intervention;
- A Disposition Program also uses community volunteers who hear more serious cases after conviction, develop service plans based on pre-sentence assessments, and prepare sentencing recommendations for consideration by the bench;
- A Victim Service Component, operated jointly by the Urban Court Program and the District Attorney, provides a range of orientation and social assistance services to victims and witnesses.

All three projects are administered by Justice Resource Institute (JRI), a Boston-based nonprofit agency modeled after the Vera Institute of Justice. Although JRI is an independent community organization, it is closely allied with the criminal justice system as a result of its mandate to improve the delivery of rehabilitative services to alleged and convicted offenders in the state. Since 1975, JRI has operated the Urban Court Program in a storefront facility in Dorchester and has served (through all three components) approximately 1500 clients of the Dorchester District Court.

Formerly an area dominated by Irish-Americans, Dorchester is a rapidly integrating neighborhood of Boston with a heterogeneous population of roughly 225,000. Given the area's history of community involvement, a citizenry faced with growing racial tension

and fear of crime, and a sympathetic court with an established predisposition to court reform projects, Dorchester was an ideal setting to test the concept of urban neighborhood justice.

A.1.1 Program Development

John Calhoun, currently Commissioner of the Division of Youth Services (DYS) in Massachusetts, developed the Urban Court Program during his tenure as Director of JRI. The program emerged through JRI's experience in operating a pre-trial intervention program for youthful defendants. Repeated contacts with clients who freely admitted their guilt yet were unaffected by the traditional responses of the criminal justice system, convinced Calhoun of the need "to make a better connection between the offender, his victim and the larger community". Thus, the mediation program would focus on cases where a judgment of guilty or innocent failed to resolve the interpersonal problems motivating the criminal offense. Mediation by citizen volunteers would serve both to involve the community in the remediation of these community based disputes and to educate participants about the functions and limitations of the court. Where the judge had to find guilt in more serious cases, the same spirit of community responsibility would continue under the Disposition program. The offender would have a sense of the impact of his actions on the victim and the community, the victim and other lay citizens would be involved as participants rather than observers in the disposition process, and the system might fashion more appropriate sentences through the involvement of more people with a vested interest in the welfare of the community. Both the mediation and disposition components would emphasize actual and symbolic restitution agreements as a means of further influencing both offenders' and victims' perceptions of justice. Finally, the victim service component would complete the definition of community justice by providing independent services to the victims of crime.

A.1.1.1 Proposal Preparation

In late fall of 1973, Calhoun discussed these concepts with staff of LEAA's Office of Regional Operations who encouraged him to submit a formal proposal for discretionary funds. Over the next

several months following that meeting, funds were raised from private foundations to permit JRI to design the program, obtain community and judicial support and prepare an application for funding. A researcher was hired to begin proposal development while Calhoun proceeded to select a target court and mobilize the necessary support.

No formal needs assessment guided the selection of Dorchester as the project site as JRI staff were familiar with the court and its community context through their prior involvement with court-based human service projects. Calhoun was known and respected by the judicial community and had little difficulty convincing Dorchester's Presiding Justice Paul King and his Associate Justice, Dolan, of the potential value of the program. Moreover, as a judicial officer in a community which viewed the court as the only source of redress for many personal and community problems--yet were chronically dissatisfied by their perceptions of official justice--King was inherently receptive to the use of alternate disposition and sentencing tools. In his view, the disposition program would allow the community to experience and empathize with the difficult judgments involved in sentencing decisions; the service assessments associated with this component would fill an important need left wanting by an inadequate probation department; the victim service component would provide a significant public relations benefit to the court. Only the mediation component failed to elicit a positive response--largely on the grounds that cases not yet before the bench were not the concern of the court, and the suspicion that mediation might prove unworkable in the hands of citizens. Despite this reservation, no significant opposition was raised to the program as a whole as it was viewed as a vehicle to bring additional staff resources to a court where budgeted positions had not increased in five years.

Other organizations approached during this period included the Dorchester Court Community Advisory Board, the Probation Department, the Suffolk County District Attorney's Office, and the two police districts in Dorchester. The Court Advisory Board was extremely supportive, but the latter agencies were relatively ambivalent. This lack of enthusiasm was not, however, cause for immediate concern, as only the support of the judiciary and the community was essential to establish the program's credibility.

In March 1974, an invitation was sent to every known community group in Dorchester. Included were black community organizations, the Federation of Neighborhood Houses (a conglomerate of white community and youth organizations) as well as civic associations whose members had formed vigilante patrols in response to Dorchester's rising problem of racially motivated crime and vandalism. Justices King and Dolan together with Calhoun, presented the three programs to an enthusiastic audience who established committees to assist in developing each of the three components. These committees, which became community boards responsible for reviewing staff hiring decisions and formulating general program policies (as subcommittees of the Court Advisory Board) met regularly throughout the program development process. In December 1974, the formal application was submitted.

A.1.1.2 Grant Processing

Though community and judicial support was assured, it was not until September 1975 that the grant was funded and the mediation component accepted its first clients. Though Federal and Regional LEAA personnel had pledged their support, the State and Local Planning Agencies (the Mass. Committee on Criminal Justice and the Mayor's Council on Criminal Justice) had not been involved in the program development process and were concerned that aspects of the design duplicated existing criminal justice services. Disposition was viewed as a function of probation, a position previously voiced by the Probation Department. Mediation and victim services were seen as a logical extension of an existing District Court Prosecutor Program, again a position shared by that constituency. As approval of the Mass. Committee was a precondition of the grant award and approval of the Mayor's Council was necessary to ensure the City Council's acceptance of the grant once awarded, the application was held in suspense pending the resolution of these issues. When funds were incorporated to permit the District Attorney's Office to administer a portion of the Victim Service program and when it became clear that the Probation Department would be unable to manage the Disposition program, the grant to JRI was authorized.

A.1.1.3 Program Implementation

In December 1975, shortly after the program began to receive referrals, Calhoun left JRI to assume the post of Commissioner of DYS and Neil Houston was recruited as JRI's new Executive Director. Houston, an extremely talented manager with a broad knowledge of offender service delivery systems in Massachusetts, faced three major problems in bringing the start-up year to a successful conclusion:

(1) Finances. In order to sustain the community support mobilized during the program development process, start-up activities had begun well before the grant award with the recruitment of a project director and key component staff in May 1975. As a result, JRI had incurred a substantial operating deficit.

(2) Personnel Selection. The Bench, JRI, and the Community Advisory Board had emerged from the design phase with different and conflicting expectations of their respective roles in the process of selecting program staff. While the community viewed the hiring process as an important aspect of their responsibility to the program, the District Court's welcome had been largely predicated on the assumption that the judiciary would hold the authority to fill one half of all positions--specifically those associated with the Disposition and Victim components. This misunderstanding delayed the start-up of these two components, and ultimately jeopardized the entire program's standing with the community and courts. Long and careful negotiations ultimately resulted in a detailed staff selection policy which allows all parties to participate in hiring decisions with the court holding veto powers in the two components.

(3) Goal Definition. Though the philosophy of the program was clear, the Urban Court staff had faced a good deal of initial uncertainty about the project's day-to-day mechanics and operational objectives. Unlike projects using student or professional mediators, Urban Court was immediately responsible to the community as well as to its clients and the court--a position which demanded clearly defined roles and the guidance of specific process and outcome objectives. As these only evolved over time, the first year of operations was markedly less efficient than succeeding years.

To some extent, Urban Court's start-up problems reflect the penalties of introducing an innovation that had not been widely tested or documented. As such, these problems are less likely to be replicated in future program implementation efforts. Nevertheless, an important lesson is suggested by the Urban Court experience. Specifically, a decision to pursue the goals of citizen involvement and community education requires the investment of more time in the program development stages--both to cultivate support and to define precisely the selection criteria for staff and volunteers and the subsequent roles and responsibilities of all participants. This in turn may imply the need for a separately funded planning phase.

A.1.1.4 Program Caseload

During the first grant period, 143 clients were served by the Mediation program with a budget of $125,953, or $880 per case referred. As Table 3.1 indicates, both costs and staff have been reduced over time, yet the number of clients served has substantially been increased. For the present grant period, the project expects 350 referrals, yielding a cost per case referred (which may involve two or more clients) of $300.

Table 3.1
Urban Court Mediation Component*

PROJECT COMONENETS	Grant 1 9/75 - 5/76	Grant 2 5/76 - 5/77	Grant 3 (Est.) 6/77 - 6/78
Mediation Budget	$125,953	$141,182	$105,268
Staff	7	6	4
Mediators	18	35	50
Clients Referred	143	315	350
Cost per Case Referred	880	448	300

* Costs are based on staff positions and stipends earmarked for the Mediation component and a prorated share of all non-attributed costs budgeted for the Urban Court Program as a whole.

Reductions in the costs of central support services (largely training and research), the elimination of several specialist positions, and the replacement of component directors with mid-level supervisory staff, have been responsible for the decreased costs and were necessary to reduce the program's deficit. Houston attributes the vastly increased efficiency to the articulation of clear goals and objectives for each of the components. Supported by a management information system, carefully documented program procedures, and regular staff and supervisory performance reviews, the program has handled a 27 percent increase in clients despite a 40 percent decrease in staff.

The following sections describe the program's current operations and caseload in greater detail. The discussion focuses on the program's dispute resolution procedures with reference to the disposition and victim components only as they affect the administration of the mediation project.

A.2.0 Current Operations

The program offices are located in the storefornt of an unassuming building two blocks from the District Court. Low cost and proximity to the court were the determining factors in selecting this site. Location within the courthouse itself was not considered due both to a shortage of court space and the desire to house the project in a community-based facility. Project staff suggest two primary benefits associated with their independent location:

(1) The ability to preserve the project's distinction as an alternative to official court procedures. The project office conveys a more relaxed neighborhood atmosphere not possible in an extremely busy urban court. At the project office, staff are immediately accessible and there is little of the traffic, confusion, and formality which characterizes the court.

In addition, the project is often used as a drop point for clients who have agreed to a property restitution settlement. Clearly, returning a television set to a neighborhood office is less threatening than to an official building.

(2) The ability to maintain the project's identity and purpose. Since the physical plant and staff resources of the Dorchester court are inadequate to handle the flow of cases, it might be difficult to avoid absorption by the court and the addition of functions to support routine court operations.

Because it is extremely close to the court building, referral procedures have not suffered due to the project's physical independence. A staff member attends morning arraignment sessions and routinely answers calls from the bench to interview prospective clients. However, if sufficient space were available to provide the program with the same independence, privacy and informality that it currently enjoys, District Court personnel would favor a court-based location.

A.2.1 Case Criteria

There are currently no formal criteria for determining the eligibility of a case for mediation. Because this component was defined initially as a forum for interpersonal matters, cases involving citizen disputes have traditionally constituted the majority of the project's caseload. Of 458 cases referred through April 1977, 36 percent involved family disputes, 20 percent disputes among neighbors, 17 percent among friends, and roughly 10 percent between landlords and tenants. The balance involved merchant/customer disputes, school-related problems and miscellaneous complaints. The criminal charges associated with a sample of project cases are illustrated in Table 3.2.

While there is no formal case screening procedure, project personnel prefer to focus on cases which involve disputants who will have a continuing relationship. These cases are considered particularly amenable to mediation and are consistent with the project's community orientation. The only type of interpersonal dispute which the program has found difficult to handle is major community conflicts which may involve entire neighborhoods or community factions. Because such cases can involve the project staff in community organizing, fact-finding and the prospect of numerous mediation sessions, they can too easily absorb the entire project staff over extensive periods of time.

Table 3.2

Referral Sources by Criminal Charge
(March 1 - May 8, 1977)

CRIMINAL CHARGES	Bench/DA	Clerk	Other
Assault & Battery	16	7	–
Assault & Battery with a Dangerous Weapon	18	5	–
Mal. Destruction	8	2	–
Threats	10	6	–
Larceny	3	–	1
Trespass	1	–	–
Breaking & Entering	2	–	–
Breach of Contract	2	–	2
Contributing to Del.	2	1	–
Annoying Phone Calls	3	–	–
Runaway	1	–	–
Disturbing the Peace	–	1	–
C.H.I.N.S.	–	–	1
Biting Dog	–	–	1
Harassment	–	–	1
	66	**22**	**6**

The project has not dealt extensively with cases involving institutional victims such as shoplifting, bad checks and consumer fraud. (Merchant/customer disputes have been handled but generally through the disposition program.) Large institutional consumer complaints are not considered amenable to mediation due to the imbalance of power between disputants. Although there has been no specific attempt to exclude shoplifting or bad check cases, few have been referred to the program due both to the timing of court sessions in these cases and the absence of procedures for referral by complaining institutions.

Recently, several breach of contract cases have been referred from the small claims court and the project has advertised its willingness to provide factfinding and mediation services in small claims cases. This is not seen as a vehicle to replace the small claims process but rather, to supplement that process in cases where personal issues are involved or information pertinent to the claim cannot be accessed by the court. Both the project director and court administrator believe that mediation is appropriate to as many as 75 percent of all small claims cases.

A.2.2 Referral Sources

There are currently four sources of referral to the project: (1) the Clerk's Office at the point that the complaint application is taken out or during a 35A hearing before the Clerk; (2) the District Court prosecutor's office during the screening interview with the victim; (3) the Bench during the arraignment or at the hearing; and (4) miscellaneous sources including the project's own disposition and victim components, walk-ins and community referrals.

Although the project initially expected the predominance of its referrals from the Clerk's office, well over half have come from the bench (57 percent for combined Bench/DA referrals), a third from the Clerk and the balance from police and miscellaneous sources. This seems largely due to the temperament of the Clerk who enjoys his own informal mediation duties and often prefers the responsibility for referral decisions to reside with the bench. Although the court's involvement in these cases is consequently greater, Judge King suggests that intervention after arraignment

lends the weight of the court to the referral which may provide greater incentive for successful resolution. Cases from the bench are continued for ninety days, a period which allows the project to mediate the case and complete its follow-up. Although these cases remain on the docket and are technically scheduled to return for review, the policy on court appearance is flexible.

Cases have not been received from the police as originally envisioned. Procedures were developed with the relevant police districts, but the Boston Patrolmen's Association rejected the arrangement, as referral in lieu of arrest would reduce the overtime benefits associated with court appearance.

In summary, the project intervenes at all stages in the criminal justice process, from intake and arraignment through the post-conviction stage. By virtue of its later entry points, the bulk of the cases heard are clearly prosecutable.

A.2.3 Resolution Techniques

When the Clerk, the D.A., or the judge feels that mediation is an appropriate method for resolving a dispute, an Urban Court staff member is available to explain the program to the complainant, and to the respondent if she or he is in court. If the disputing parties agree to mediation, they sign a voluntary agreement form, and a time for the session is scheduled usually within a week. Sessions are scheduled at the convenience of the disputing parties, weekdays, evenings and on Saturday if necessary. If the respondent is not present at the time of the referral, a letter is sent requesting that the Urban Court offices be contacted within 48 hours. Once an agreement to mediate is signed by both parties, a panel of two or three mediators is selected.

The program offers only mediation, not arbitration. If the disputing parties cannot reach a mediated settlement, the matter is referred back to the court--either to the Clerk's office for a decision whether the complaint should issue or to the D.A.'s office for process through the normal court procedures.

Mediation sessions typically last two hours and repeat hearings are held in complex cases. Seldom are more than two hearings required. The panel of mediators usually consists of three people; however, as the mediators have become more experienced, only two have been used in many cases and some will begin to work alone.

Panelists are asked to arrive at the offices about 15 minutes before the hearing begins in order to permit a staff member to brief them on the nature of the dispute. Very little background is given the panel to avoid creating any prejudice. While the panelists discuss the format for the session among themselves, the staff member greets the disputants as they come in and tries to make them feel as comfortable as possible.

When the panel is ready to begin both disputants are brought to the conference room by the staff member and introduced to the panel. The staff member then leaves the conference room, but remains available during the session.

Usually one member of the panel (designated as chairperson) begins the proceedings by explaining the Urban Court Mediation Project. This introduction is critical for it places disputants at ease and gives them an opportunity to ask questions and to establish trust. Several points are emphasized in the introduction. The panel stresses that the mediation hearing is not a court and the panelists are not judges; rather, the panel is there to listen to both parties and to assist them in resolving the conflict in a mutually satisfying manner. The panel emphasizes that if an agreement is reached during a session, it will be one that the disputants themselves have arrived at and feel they both can live by. The issue of confidentiality is explained and the disputants are told that the panel will be taking notes which will be destroyed before the disputants leave the session. Both disputants are encouraged to take notes if they wish.

The panel also explains that from time to time they may wish to confer among themselves or to speak with one or the other of the disputants in private. These individual discussions, called caucuses, usually occur two or more times during a mediation session. During these times one or both will be asked to leave the conference room.

The session begins by asking the complainant to tell his or her side of the story with the panel asking questions where appropriate. The respondent is then given the same opportunity. An open and often heated discussion follows and at the point where the panelists feel they have acquired a general understanding of the situation, they usually "caucus" after asking both disputants to leave the room. During the caucus, initial impressions are shared and the facts are reviewed. The panel then discusses how to proceed. Frequently, each disputant is asked to speak to the panel alone. Confidentiality is again stressed, and the panel continues the questioning. Often a disputant shares information which has not been revealed in the other disputant's presence. The panel begins to probe for each disputant's "bottom line," the resolution each disputant is seeking from the other. Once that bottom line is clear the panel can identify the areas of agreement and disagreement between the two disputing parties. This enables the panelists to convey from one party to another what each is asking in a more positive, less emotional manner than might be possible if the two parties were confronting each other throughout the entire process.

If an agreement is reached during the mediation session, it is written up by the panel, signed by both parties and witnessed by the panel members. Copies of the agreement are given to both parties. The agreement is not a legally binding document; however, the panel encourages the disputants to contact the program if they feel the agreement is not working. The panel also informed each disputant that a staff member will be contacting the parties within two weeks to monitor the agreement.

If the complaint has not issued prior to referral for mediation, the project staff simply notifies the Clerk whether or not an agreement was reached. If the complaint has issued then the disputants do need to appear in court. A copy of the agreement is forwarded to the D.A. and Probation Department. At this point, the case will either be dismissed or continued for a period of time (2 to 3 months) and then dismissed provided the agreement has not broken down.

Social service referrals are available to both disputing parties and are offered at various stages of the process. Each case is assigned a Resource Coordinator who meets with each disputant prior to the mediation session to obtain their written agreement

to submit the dispute to mediation. If either party requests assistance from the Program at that time, the Resource Coordinator begins immediately to identify the needed resource. For example, the complainant may request assistance in locating alternative housing. Services requested at this point are not necessarily relevant to the dispute. Social services are also frequently part of the mediated agreement and again the Resource Coordinator assigned follows up with the disputant to arrange for the referral. For example, one fifteen-year-old was referred to mediation because of a complaint that he had stolen his neighbor's bicycle. After reaching a mediated agreement on this matter, his mother requested that he be referred for counseling; this was included as part of the final agreement.

A.2.4 Hearing Staff Qualifications

Initially, 18 lay community people were screened and selected to go through an intensive three week training course in mediation techniques. Two additional recruitment efforts have occurred, each producing 25 mediators. With few exceptions, mediators are residents of the immediate community and consist of a cross section of men and women of a variety of ages and professions. The use of more than one mediator describes a consensual mediation model similar to that used by the Institute for Mediation and Conflict Resolution (IMCR) in New York. Mediators are available on an as-needed basis and participation ranges from eight to forty hours per month. The project pays its volunteers a stipend of $7.50 per night which generally involves a single session. The availability of stipends is considered an important feature as it provides participants with expense money for babysitters, transportation, or meals; allows the project to make significant demands on its volunteers; and conveys a message to the community that their participation is important.

Both the project and court personnel have no reservations about the use of citizen mediators. For non-personal cases using an arbitration model, staff are willing to concede that community involvement may not be as important. For the Urban Court caseload, however, community people are considered to have a bigger stake in the proceedings and the project can perform an important citizen education function, reducing the community's alienation from the court.

The project emphasizes that efforts to replicate this model must include sufficient management time and resources for proper training and ongoing recruitment activities.

Posters, local newspaper advertisements, churches, local community groups, and the Court's Advisory Board have been used to recruit prospective mediators. Screening is conducted by the project staff who attempt to assess the applicant's sense of community responsibility, willingness to make a commitment to the project for at least three months following training, and psychological suitability to the task of mediation. The project also makes a conscious attempt to compose a group representative of the larger community.

A.2.5 Project Organization

The mediation component is staffed by a supervisor, two case coordinators and an Administrative Assistant who often assists the coordinator in conducting the initial intake interviews. Case coordinators also schedule and host mediation sessions, arrange all social service referrals and conduct follow-up and court liaison activities. Lois Gehrman, the overall Project Director for Urban Court, administers all three program components. The project currently draws its mediation staff from a pool of 50 trained citizens.

Most of the project's staff turnover has been due to promotion. Gehrman, for instance, was the former director of the mediation component, and assumed overall project leadership responsibilities by unanimous vote of the staff and Community Board. Turnover among community volunteers has not been a substantial problem and the project has always enjoyed sufficient community support that the pool of applicants has far exceeded the requirements of this component.

A.2.6 Training

During the start-up phase, staff received intensive formal training in the court process and mediation technique. Subsequent additions

to the staff have been trained by supervisory personnel. During the current grant period in-service training has consisted of a full day of training for all staff in reality therapy and case management techniques followed by a day of supervisory staff training to introduce the project's MBO system. Periodic training events are also scheduled to cover topics of special relevance to the project's caseload. "Understanding the Black Family" was a topic of one recent session. Formal training activities are supported by monthly meetings of all staff and bi-weekly case reviews.

Three week-long training cycles have been held for mediators. The first two cycles were conducted by IMCR. To reduce the costs of contracting training services, the third cycle only involved IMCR during the first day of training. The sessions include role playing in mock session, videotape exercises, case studies and guest speakers to orient participants to the criminal justice system. Following the satisfactory completion of the pre-service training period, volunteers begin to participate under the supervision of more experienced mediators and gradually become active panelists.

A.2.7 Goal Achievement

An evaluation of all three program components has been conducted by Touche-Ross which examines attitudes toward the program as well as caseflow statistics and costs. The project is also to be incorporated in an international comparative study of dispute settlement procedures funded by the National Institute. Finally, the project's third grant has included funds for continuing evaluation activity.

The project's own management information system has been designed to provide comprehensive monthly reports which tabulate referrals by source, source by type of dispute, type of dispute by disposition, outcomes of mediation, recommended social services and the number of sessions held. The collection and tabulation of this information requires roughly 2 hours/week for each line staff member, 4 hours/week of supervisory time, one day/week for the overall project director (3 components), and 1 day/week for JRI.

According to these reports, 137 of 458 referrals (29 percent) over an eighteen month period (from 9/75 to 4/77) have withdrawn or

failed to consent to mediation. Of the 302 cases mediated during 350 separate sessions (excluding cases in process or subject only to social service referral), 269 (89 percent) have been settled. Thus, mediation has failed to result in a written resolution in only 33 cases.

Project staff follow up on all cases two weeks after an agreement is reached and again three months later. These reports indicate that there have been "breakdowns" in 42 or 15 percent of all agreements. A breakdown, however, does not necessarily imply that the case returns to court, but rather that one or both parties are dissatisfied with the progress of the settlement. Often the project re-intervenes in these cases in an attempt to resolve the breakdown. Though it is clearly a small fraction of all mediated cases, the precise number of actual returns to the court is unknown.

Data on the demographic characteristics of clients are not routinely collected. The project does solicit information on client attitudes towards the project during its follow-up calls; however, no analysis is available. The number of social service referrals is a statistic reported each month; the latest report indicates that services have been recommended in 111 cases.

The full impact of the project on court caseloads is difficult to determine. However, Judge King has estimated that the time to hear cases involving interpersonal disputes averages 45 minutes each--more time than a probable cause on murder might require. He estimates the total savings at roughly three days of a judge's time each week, not including all related court personnel and processing costs. In the absence of the mediation program, the court administrator suggests that many cases would be continued without a finding and placed on probation. Accurate figures on the marginal costs of bench trials and subsequent probation supervision are not available to compare with Urban Court's per capita costs.

A.2.8 General Observations

Despite substantial start-up problems (which may be unique to Urban Court's model of citizen involvement and the community and

court context in which it operates), the program has won the confidence of the court, increased the sensitivity of its community volunteers to the court process, and instituted a mediation process that is able to effect lasting resolutions in an overwhelming majority of dispute cases.

On the administrative side, procedures have been thoroughly documented, detailed performance measures have been institutionalized, and the program now enjoys a structure that can endure without tenured staff. At the same time, case costs have been substantially reduced since the first grant period. Nevertheless, the program remains more costly than other programs reviewed here. Two factors appear to contribute to the differences in case costs:

(1) The model of community involvement necessarily involves higher administrative costs due to the need for tighter management controls, more extensive training and recruitment activities and more time to develop and sustain community interest.

(2) The project operates under a multi-level administrative structure. As one component of a larger program effort operating under the aegis of JRI through the formal sponsorship of the City of Boston, the mediation project shares central project management expenses, incurs some administrative expenses for its parent organization (JRI), and is assessed a substantial amount for city overhead expense.

Current prospects for continued funding are unclear; historically the City has been reluctant to raise the court's operating budget which has remained fairly constant for five years despite an increasing caseload (that now amounts to roughly 13,000 matters heard annually). In the event that sufficient funds do not become available to maintain the project as a separate entity, Judge King hopes to be able to institutionalize the concept and aspects of the mediation process as part of his normal court routine. In the meantime, the project looks forward to expanding its referral sources to permit earlier intervention and a further reduction of the burden placed on the system by cases which involve interpersonal disputes.

Case Study B:

The Columbus Night Prosecutor Program

B.1.0 Introduction

The Columbus Night Prosecutor Program is operated by the City Attorney's Office of the City of Columbus, and program services are provided by consultants from the Capital University Law School under contract to the City Attorney's Office. The program was established in November 1971 as a joint effort of the Law School and the City Attorney. Law Enforcement Assistance Administration (LEAA) block grant funds were received in September 1972 providing the opportunity to expand the program. More recently the project has been institutionalized as part of the city's budget. The project serves Franklin County, Ohio with a total population of approximately 921,000. The City of Columbus includes 67 percent of the county's population. The project offices are located within the prosecutor's office in the City Hall Annex building in downtown Columbus. Cases are referred to the project by the screening staff of the prosecutor's office and are also accepted by clerks on the project staff when the prosecutor's office is not open for business. The project processes a wide range of cases including interpersonal disputes, bad checks, violations of city ordinances, and some consumer complaints. Once a case is accepted by the project, a hearing is scheduled for approximately one week later. Hearings are held in the prosecutor's office in the evening, and law students serve as mediators at the hearings. The students are trained in mediation techniques and attempt to resolve the disputants' problems through discussion. Disputants are often referred to social service agencies or to graduate student social workers on the staff of the project.

B.1.1 Program Development

James Hughes was the City Attorney for the City of Columbus in 1971, and he and Professor John Palmer of the Capital University Law School initially developed the Night Prosecutor Program. Both men had become aware of the difficulties experienced by citizens in dealing with misdemeanor and other minor dispute cases.

Particularly in cases in which the parties to the dispute had a long term relationship established (e.g., married couples, relatives, and neighbors) the court seemed to be an inappropriate forum for resolution of problems. The court was structured to adjudicate guilt or innocence for a given event, while an examination of the problems underlying the event was likely to be more helpful for the future harmony of the disputants. Together Professor Palmer and City Attorney Hughes developed plans to have interpersonal dispute cases referred to Professor Palmer and another Capital University law professor for discussions with the disputants. The discussions were intended to determine the underlying problems leading to the dispute rather than to merely deal with the specific incident cited in the complaint. Mr. Hughes had noticed in his practice as an attorney that many interpersonal dispute cases involved reciprocally hostile relationships. That is, both parties to the dispute had participated in harassment of the other party, and long-term disagreements and misunderstandings were common. In such cases, the complaining party is often the one who "wins the race to the police station." The development of the Night Prosecutor Program provided the City Attorney's Office with a mechanism for disentangling the complex array of misunderstandings, hostilities, and distrust common in citizen dispute cases without having to resort to adjudicatory hearings. The founders' hope was that an open airing and discussion of these problems could lead to a mutual understanding regarding ways to avoid incidents in the future.

Initial plans for the project were developed in the summer of 1971. The pilot project using the two Capital University law professors as hearing officers began in November, 1971. Both professors mediated numerous interpersonal disputes during the pilot study phase, and the pilot test was considered to be very successful by both the professors and the City Attorney's Office. The feasibility of having outside parties discuss case problems with disputants and attempt to resolve them before the prosecutor's office had to process them was established.

B.1.1.1 Proposal Preparation

The success of the pilot test of the mediation concept led City Attorney Hughes and Professor Palmer to decide to apply for federal funds to support the mediation project. The development of

the grant proposal was quite straightforward because City Attorney Hughes operated the prosecutor's office and thus had the authority to establish such a project, and Professor Palmer had ready access to law students to staff the proposed project. The initial staff budgeted in the proposal included a Coordinator for the project, a Secretary, a Legal Supervisor who would be present during mediation sessions to answer legal questions, and funds for Clerks and Hearing Officers. These personnel costs made up virtually the total budget, and the prosecutor's office provided space and office equipment free to the project.

B.1.1.2 Grant Processing

The Columbus proposal was submitted to the Columbus-Franklin County Criminal Justice Coordinating Council and the proposal was processed during the summer of 1972.

B.1.1.3 Program Implementation

The Law Enforcement Assistance Administration grant period began in September 1972. Project staff were hired under the supervision of Professor Palmer. Law students at Capital University were very interested in the project because of the opportunity it offered to have experience in the prosecutor's office, and recruitment of project staff was not difficult. The students did not receive extensive training in mediation techniques. On-the-job training was the basic approach used by the project, with new mediators participating with experienced mediators until they were prepared to handle hearings on their own. As was cited above, the prosecutor's office provided space and office equipment for the project, eliminating the need to locate and obtain them independently.

B.1.2 Program Caseload

During the pilot study period (November 1971 through August 1972) approximately 1,000 hearings were held, and all but twenty disputes were reported by the project to have been resolved without

having to resort to formal criminal procedures. During the first year of operation under the Law Enforcement Assistance Administration grant (September 1972 through August 1973) 3,626 hearings were scheduled. Of this group, 37 percent of the complainants failed to appear at the hearing resulting in a total of 2,285 hearings being held. Eighty-four criminal charges were filed following the 2,285 hearings and the remaining cases were considered to have been resolved by the project.

Detailed data on the specific charges brought before the project during the early years of operation are not available, although the project reports that the most common charges included "assault and battery, menacing threats, malicious destruction of property, telephone harassment, improper language, and petty larceny." The project also began to hear many "bad check" cases during this period of operation.

B.2.0 Current Operations

The Columbus Night Prosecutor Program is currently located within the prosecutor's office in the City Hall Annex building in downtown Columbus. The location is readily accessible by public transportation. The prosecutor's office has recently moved to the City Hall Annex building from its original location in the Columbus Central Police Station. The Night Prosecutor Program was located in the Police Station within the prosecutor's office prior to the recent move. The project has a number of small offices available for hearings and interviewing new complainants. Project records are filed in the prosecutor's office, and a waiting room is available for disputants and new complainants near the hearing rooms.

B.2.1 Case Criteria

The Columbus project "focuses on criminal conduct involving interpersonal disputes in which there is a continuing relationship, such as disputes between families, neighbors, landlord-tenants, and employer-employees." Interpersonal disputes of this sort can manifest themselves in a great many different types of offenses. As was noted earlier the project processes many cases of assault

and battery, threats, harassment, destruction of property, and petty larceny. In addition, as the project has grown, it has become heavily involved in the processing of bad check cases. These cases are structurally different than the preceding ones because the two parties are not individuals with longstanding relationships. Instead, a representative of the company or store bringing the complaint serves as the complainant. Issues which arise in bad check cases tend to relate to interpretations of facts rather than to the emotional complexities observed in actual ongoing interpersonal relationships. The project has also processed cases involving minor civil claims. An arrangement has been made with the Small Claims Court in Columbus to waive the standard Small Claims Court mediation session which is used in Columbus prior to having a referee hear the case if the case had already received a mediation hearing in the Night Prosecutor Program and the complainant still wishes to pursue the case.

The case criteria have remained relatively stable over time but the proportion of bad check cases has been increasing quite steadily. For example, bad check cases made up 50 percent of the project caseload in 1975 but increased to 61 percent of the caseload in 1976. Detailed summaries of the types of cases processed are not available. The only records kept on cases are three-by-five cards on which are noted the names of the complainants and respondents, the hearing date, an informal name for the charge (which is likely to vary considerably among the different Hearing Officers filling out the card), the outcome of the case (dropped, no show, settled, affidavit, etc.), and a very brief description of the results of the hearing. This form of record keeping has major advantages in speed and in insuring the confidentiality of the disputing parties. No significant information regarding the nature of the dispute would be likely to be recorded on the card in sufficient detail to assist either a prosecutor or a defense attorney, and in any event no efforts to subpoena records has occurred. On the other hand, the forms do not provide a researcher with adequate data to determine the distribution of types of cases and their changes over time.

As in the case of other projects, the project does not have a means for accurately estimating whether the cases selected by the project would have been processed through many stages of the criminal justice system. Clearly many of the matters involve events which are technically chargeable as criminal offenses, but it is not clear what proportion of these cases would have been removed from the

system by the prosecutor's screening staff prior to charging or would have dropped out spontaneously due to the complainant's later decision not to pursue the case further. In regard to the latter form of attrition in cases, a policy was established in the early 1970's requiring complainants to file a $10.00 deposit at the time of filing a complaint. This deposit would be returned when the complainant appeared in court. The purpose of this policy was to discourage frivolous complaints of the "kiss-and-make-up" variety which clog the prosecutor's office and yet never reach the court due to the citizen's change of heart after cooling off. This policy resulted in a significant drop in the number of cases filed, and the Night Prosecutor Program was developed in part to mediate cases that were being turned away by the filing fee requirement. The fee policy was dropped in 1974 because it was ruled unconstitutional in an appeals case. In summary, research is needed to determine whether the types of cases selected by the project relieve the prosecutor's office and the court of a significant portion of the caseload.

B.2.2 Referral Sources

The Night Prosecutor Program receives referrals from the City Prosecutor's screening staff, who are present in the prosecutor's office during regular business hours, and also processes walk-in cases during the evenings and Saturday morning when the project's Clerks are available at the prosecutor's office. Two part-time and one full-time "legal interns" serve as the prosecutor's screening and intake staff for misdemeanor cases. Their offices are located within the prosecutor's office, and the police and other members of the prosecutor's staff refer potential cases to them for review. The legal interns interview the complainant and determine whether the case would be amenable to the mediation format of the Night Prosecutor Program or whether the charges are sufficiently serious to require that an immediate criminal charge be brought. In cases where the case appears appropriate for the Night Prosecutor Program the legal intern fills out a form describing the issues of the complaint and noting the names and addresses of the complainant and respondent. A date for a Night Prosecutor hearing is scheduled at the convenience of the complainant, and the secretarial staff of the prosecutor's office send a notice to the respondent requesting his appearance at the hearing. The respondent is informed on the notice that "failure to appear may bring further legal action" and the form is signed "by order of the police prosecutor."

When complainants appear at the prosecutor's office on weekday evenings or Saturday mornings, the project's clerks discuss the issues of the complaint with the complainant and if they judge the case to be appropriate, they schedule a hearing. If the case does not seem amenable to mediation, but the charge seems to be substantiated, the project clerks refer the citizen to the prosecutor's staff for further court prosecution of the case.

The project does not have detailed data on the initial sources of case referrals. Judges of the Municipal Court refer a substantial number of cases to the court. Clearly the police also recommend the project to many citizens. In other cases, citizens may know of the project due to previous contact with the project or knowledge of someone who has been in contact with the project. Most referrals are likely to be generated, however, simply from contacts with the prosecutor's office. Citizens are directed to see the office legal intern screening staff or project clerks.

Referral procedures for bad check cases differ from those for interpersonal disputes. Over 100 companies participate in the project's bad check program. Staff members of the companies fill out Night Prosecutor Program forms and attach a list of all of the respondents they expect to appear on a given night. A single Hearing Officer is assigned to handle all bad check cases and they are scheduled from six to eight p.m. on Monday and Wednesday nights. The companies keep records of the new cases, repeat cases, and cases in which respondents have made a promise to pay. Check cases do not involve mediation in the standard sense, and a merchant may handle as many as thirty bad check cases in one half hour with the assistance of the hearing officer. Individuals all sit in the same room and step forward to discuss the case with the company representative as they are called.

The Night Prosecutor Program monitored the Summons Docket in its early years of operation, and diverted appropriate cases into the project. This practice has been terminated because staff feel they are now reaching most of the appropriate cases before they reach the summons docket.

B.2.3 Resolution Technique

The Columbus project relies upon mediation as the method for processing cases. Hearings are scheduled in half-hour blocks from six to ten p.m. on weekday evenings and also on Saturday mornings. Hearings are held in private rooms in the prosecutor's office, and disputants are allowed to bring witnesses with them if they feel it is necessary. Attorneys occasionally accompany disputants, but the project does not encourage the use of lawyers.

Hearing officers typically begin hearings by explaining the purpose of the Night Prosecutor Program. The complainant is then allowed to state the nature of the complaint, followed by comments by the respondent. An effort is generally made to enable the two parties to present their initial interpretations of the specific incident without interruption from the other party. After the initial presentation of the problem by the two parties, the Hearing Officer encourages the parties to explore the underlying causes for the problems through questions and comments. The goal of the project is to have the two disputants arrive at a mutual agreement on a solution for their problem. At times, a witness present at the hearing may be able to suggest a solution, and often these witnesses are friends of both parties to the dispute. If the parties are not able or willing to arrive at a solution to the dispute, the Hearing Officer will typically suggest a solution which he feels is likely to be acceptable to both parties. The Hearing Officer also informs the disputants of the law and criminal sanctions which may apply to the incident being discussed.

The project does not use written resolutions. If the two parties state that they are interested in having the resolution in writing, the Hearing Officer will write a summary of the resolution and present a copy to the two parties. The project will not keep a copy of the written resolution. The reason for the avoidance of written resolutions, according to the project's current Coordinator, is that the project does not wish to give the parties the illusion that the project has the power to enforce resolutions when in fact that power does not exist. For the same reason, the Coordinator states that the project's earlier parctice of informing respondents that they are on "prosecutor's probation" for sixty days has not been commonly used lately. The aim of informing the respondents that they were on "prosecutor's probation" was to highlight the fact that criminal charges could possibly be brought

against them if they continued to bother the complainant. In actuality, "prosecutor's probation" had no independent legal force, and the threat of filing a criminal complaint "stands more on the merit of the repeated offense than on the violation of the probation agreement."

The project has pointed out in its various annual reports that the emphasis of the program was of necessity on "quantity rather than quality" due to the large volume of cases which needed to be processed. In many instances the thirty minutes allotted per hearing was not sufficient to deal with the complexity of the issues involved in the case. Because of this problem, the project obtained a grant from the American Lutheran Church to broaden the program to include graduate students from the Ohio State School of Social Work and the Lutheran Theological Seminary at Capital University. This social work component has recently received continuation funding from the city budget along with the rest of the Night Prosecutor Program. The Social Workers may sit in on a mediation session if the Hearing Officer feels that it is appropriate. In other cases the parties to the dispute are referred to a social worker for further counseling and possible referral to a social agency. Typically two or three social work graduate students are on duty each night to meet with disputants. As an adjunct to the activities of the social work staff, two programs have been developed for particularly common problems: a "problem drinker's group" and a "battered women's group." These groups receive long-term counseling and participation in the groups is voluntary.

If a complainant is not able to travel to the Night Prosecutor's Office due to physical disability, severe illness, etc. the project's Field Worker will make house calls to handle the complaint. The Field Worker may meet with the complainant and then locate the respondent and meet with him separately to try to resolve the problem. A typical example of this component in operation involves elderly individuals who feel that they are being harassed by neighborhood youths. The Field Worker will meet with the youths and attempt to eliminate the problem. The Field Worker also has been involved in site visits to disputants' homes to serve as a fact finder. In these instances the matter in dispute requires a first hand look to determine the possibilities for a fair resolution. Examples of this type of case include noisy lawnmowers and blocked garages.

B.2.4 Hearing Staff Qualifications

Hearing staff are law students recruited from the Capital University Law School. Students are very interested in participating in the project because the Night Prosecutor Program provides the student with practical experience in helping others, a source of income, and contact with a prosecutor's office which will be likely to be impressive on their employment record. An effort is made to allow many students to participate in the project. Third year law students are generally asked to leave the program to make room for second year law students to participate. Students are generally chosen for participation on a first come, first served basis, and the project typically has a substantial list of students waiting for an opening to participate in the project. The law students receive intensive training from the operators of the local "crisis intervention training program" (see Section B.2.6).

B.2.5 Project Organization

The organization of the Night Prosecutor Program has been revised occasionally to improve the delivery of services to disputants. The project was recently reorganized and the staff positions are as follows:

- Coordinator--responsible for administration of the project and some intake functions. The Coordinator is the only full-time member of the project staff, and will be on duty four hours per day in the daytime and four hours at night while the hearings are in progress. The Coordinator is a lawyer.
- Director--the Director is a law student and receives a stipend rather than an hourly wage for working on the project. The Director's duties include management of personnel at the law school, payroll, recruitment of new law students, etc.
- Senior Clerks--six law students are designated as Senior Clerks. These Clerks are responsible for docket scheduling for the nights to which they are assigned. They coordinate Hearing Officers, answer phone inquiries, and interview walk-in cases. Each Senior Clerk is assigned to a specific weekday night or Saturday

morning.

- Clerks--six law students assist the Senior Clerks, and have primary responsibility for interviewing new complainants who walk-in during the evening sessions. Both Clerks and Senior Clerks work from four p.m. to twelve p.m. on their assigned days.
- Hearing Officers--approximately thirty law students serve as Hearing Officers. Three to five hearing officers are assigned to each of the six weekly sessions (weekday evenings and Saturday mornings).
- Social Workers--two to three social work graduate students from Ohio State University or students from the Lutheran Theological Seminary at Capital University are assigned each session to assist disputants with problem solving and social service referral. These students often provide counseling for disputants when appropriate.

Due to the use of law students as project staff, the project has had considerable staff turnover during the life of the project.

B.2.6 Staff Training

Hearing Officers receive twelve hours of training in mediation and conflict resolution techniques. The training program was developed by the Educational and Psychological Development Corporation of Columbus, Ohio under contract to the Night Prosecutor Program. Hearing Officers receive textual materials developed for the course and are taught how to handle conflict, direct hearings, and use a mediational rather than adversarial approach to dispute settlement. This training is critically important because in their regular coursework law students are taught the adversarial approach to resolving disputes. Role-playing techniques are employed, and the law students are taught to be sensitive to the nonverbal cues of the disputants and to listen closely for signs of the problems underlying the incident on which the complaint is based. New Hearing Officers co-mediate hearings with experienced mediators prior to handling cases individually. Staff members also receive an orientation regarding payroll, scheduling, and other operational procedures. Many Hearing Officers are given the opportunity to ride with police officers and observe disputes in action to increase their appreciation of the types of cases

they will be viewing. Monthly meetings are held with project staff to discuss problems being experienced in intake and hearings.

B.2.7 Goal Achievement

The project maintains relatively limited records of its cases, as was discussed earlier. Project annual reports provide summaries of the accomplishments of the project. During 1976 the Night Prosecutor Program scheduled 16,575 cases for hearings. Sixty-one percent of these cases (10,146) involved bad checks and the remainder (6429) were interpersonal disputes. Of the 6429 scheduled cases of interpersonal dispute, a total of 3,478 (54 percent) hearings were held. Complainants failed to appear at the hearing in the remaining 46 percent of the interpersonal dispute cases. Only 161 criminal complaints were authorized among the interpersonal dispute cases, and this represents only 2.5 percent of the total interpersonal dispute cases referred to the project. The bad check cases similarly resulted in a low rate of criminal complaints being issued, with only 1,104 complaints issued for the 10,146 scheduled bad check cases. The combined total of 1,265 complaints accounts for only eight percent of the total cases scheduled for hearings. The remaining 92 percent of the cases were diverted out of the criminal justice system. It is not clear what percentage of the initial cases would have dropped out of the system due to refusal by the prosecutor to bring charges due to insufficient evidence to warrant a criminal charge, changes of heart on the part of complainants resulting in withdrawn complaints, etc. If the Night Prosecutor cases are considered to be diverted from the system, then it can be said that the 15,310 cases not going on to prosecution comprise 28 percent of all the criminal cases in Franklin County for the year 1976 excluding traffic offenses (i.e., 38,735 felony and misdemeanor cases excluding traffic offenses were placed on the court docket in Franklin County in 1976). Research is needed to determine the extent of attrition likely to occur for the cases processed by the Night Prosecutor. At present, it is very difficult to determine the extent to which the cases would have required extensive prosecutor and court attention.

The cost of processing cases in the Night Prosecutor Program is very low. The annual operating budget is approximately $43,000 excluding in kind contributions by the prosecutor's office (office

space, equipment, secretarial help, daytime referrals, supplies). Bad check hearings are extremely rapid and require minimal resources from the project. If only the 3,478 interpersonal dispute hearings are counted, the cost per hearing can be seen to be no more than $12.36 excluding in kind contributions of space, secretarial help, etc. The addition of these expenses would be likely to raise the maximal hearing cost to no more than $20. In contrast, the cost of processing a case through the criminal justice system has been estimated by the project to be no less than $200 and probably considerably more. Based on an assumed cost of $200 per case, the project estimates that if the 15,310 cases successfully diverted by the project were to have been processed through the criminal justice system, the City of Columbus and Franklin County would have had to pay over three million dollars for the case processing. Again, the validity of this assertion depends upon the degree to which these cases would not have dropped out early in the system due to discouragement from the prosecutor's office or decisions to not prosecute by the complainant. It should be stressed that even if some of the cases processed by the Night Prosecutor Program might have dropped out of the system early without the project's efforts, the project may still be providing an extremely important service. The project attempts to resolve disputes rather than simply bar their entrance into the system, and disputes which are resolved are unlikely to return to the system later as similar or more serious charges. Thus, savings in future police, prosecutor, and court costs are presumably achieved in instances in which the project has successfully resolved serious disputes.

Additional achievements of the project which arise from its organizational structure are (1) its great speed in case processing with the average case processed within ten days, (2) the avoidance of an arrest record for defendants caught up in minor disputes, and (3) the provision of a forum for the resolution of disputes at a time of day which does not interfere with the client's employment.

The Columbus project calls project clients approximately thirty days after a hearing to determine whether the dispute has been satisfactorily resolved. In 1976 calls were made to both the claimant and respondent in 892 cases, and a satisfactory solution was reported in 90 percent of the cases. Further contact with the criminal justice system was reported by 2.2 percent of those contacted (i.e., 20 of the 892).

B.2.8 General Observations

The Columbus Night Prosecutor Program has been successfully institutionalized into the prosecutor's office in Columbus. In 1974, the project was designated as an exemplary project by the Law Enforcement Assistance Administration, and extensive training seminars were held throughout the country to inform prosecutors of the possibility of establishing similar projects. Similar projects have been developed in other jurisdictions. For example, in Ohio projects modeled after the Night Prosecutor Program have been established in Akron, Chillicothe, Cincinnati, Dayton, Lima, and Newark.

The project has a number of features which distinguish it from the other five projects reviewed in this report including the use of law student mediators, the lack of use of written agreements, and the large proportion of bad check cases. The project's location within the prosecutor's office clearly makes the project a convenient forum for the resolution of bad check cases on the part of merchants. Similar interest has been indicated by the Apartment Owners Association of Columbus and tenants have been referred to the project for disputes involving malicious destruction of property and theft (i.e., unlawful withholding of rent deposits). The City of Columbus Health Department has also used the project to process health code violation cases.

Future funding of the project from the city budget seems assured. The project is viewed as providing a very valuable service to the criminal justice system of Columbus.

Case Study C:

The Miami Citizen Dispute Settlement Project

C.1.0 Introduction

The Miami Citizen Dispute Settlement Program is operated by the Administrative Office of the Courts of the Eleventh Judicial Circuit of Florida. The project began operations in May 1975 and initial plans for the project were established in the fall of 1974. The project serves Dade County, Florida with a county-wide population of 1,467,000, including the 355,331 population of the City of Miami. The Miami project is funded by Law Enforcement Assistance Administration (LEAA) block grant monies. The project's main office is located in the Metropolitan Justice Building, a building which also houses the prosecutor's office and Criminal courts. Branch offices have also been established by the project in local lower court buildings. The primary source of referrals to the Citizen Dispute Settlement (CDS) Program is the State Attorney's Office of Dade County. Intake screening clerks at the State Attorney's Office refer appropriate misdemeanor cases to the CDS intake staff in the same building. The police departments in Dade County also provide referrals to the project, and other cases are obtained because the complainant knows of the project's services from prior contact, media coverage, or community agency referral. A wide range of cases are accepted by the project; all meet the basic eligibility requirement that an ongoing interpersonal relationship exist between the parties. Typical cases include domestic disputes resulting in incidents of a criminal nature, neighborhood problems, landlord-tenant disputes, certain domestic felonies, etc. Hearings are typically held within seven days of the complainant's initial contact with the project, and professional mediators (e.g., psychologists, sociologists, lawyers, etc.) conduct the mediation sessions. The project prepares written agreements which are signed by both parties to the dispute in cases in which a settlement is reached. The agreements are not enforceable in court, but do provide the disputants with tangible evidence of their mutual agreement. Clients are referred to social service agencies where necessary. The project is fully bilingual to serve the unique cultural diversity that exists in Dade County.

C.1.1 Program Development

The Miami project was developed in large part by Mr. Fred Delappa, who was the Deputy Court Administrator and Special Assistant to the State Attorney at the time the program was planned. Mr. Delappa studied the operation of the State Attorney's Office and the courts and felt that considerable savings and increased assistance to citizens could be achieved with the development of a mediation program similar to the Columbus Night Prosecutor Program. For example, Mr. Delappa observed that approximately 35 percent of the criminal misdemeanor cases filed in the County Court resulted in dismissals "voluntarily by the complainant or involuntarily by the non-appearance of the complainant." Given the estimated cost for processing a case from affidavit to hearing of approximately $250, Mr. Delappa estimated that the theoretical cost to the Dade County criminal justice system was in excess of four million dollars.

C.1.1.1 Proposal Preparation

A decision was made to apply to the Law Enforcement Assistance Administration for block grant funds to establish the Miami Program. The initial plan was to have the program be operated by the State Attorney's Office. The project developers were acquainted in detail with the Columbus Night Prosecutor Program and its operation within the local prosecutor's office through exemplary project publicity on the program. Since the Columbus project seemed to operate well, the plan in Miami was to similarly situate the new program in the prosecutor's office. Difficulties occurred, however, in making arrangements for the necessary matching funds for the LEAA grant. The county had funds available since a bail bond program had been planned but was then not established. The money set aside for the bail bond project could be used for the new Citizen Dispute Settlement project, but could not be used as a match if the program was to be attached to the State Attorney's Office. Florida regulations forbid the augmenting of a state agency budget with county funds. In September 1974 the court administrator agreed to have the Citizen Dispute Settlement project attached to the Administrative Office of the Courts. Mr. Delappa received assistance from various members of the State Attorney's Office and the Administrative Office of the Courts in making these arrangements. LEAA held a regional training conference dealing with methods for establishing citizen dispute settlement projects

on the Columbus model during the time the Miami proposal was being developed. Mr. Delappa and Mr. Thomas Peterson, a member of the State Attorney's Office staff, attended the conference, and were further convinced that the Miami project should incorporate many of the features of the Columbus project. One major departure from the Columbus model was the decision to use professional mediators rather than law students to serve as Hearing Officers. The planners felt that professional mediators would be more expensive but would be better able to handle the complex disputes likely to be processed by the project.

C.1.1.2 Grant Processing

The Miami proposal was submitted in June 1974 to the Law Enforcement Assistance Administration for block grant funding. The Metropolitan Dade County Planning Department and South Florida Planning Council were the initial recipients of the application. The announcement of the grant award was made in November 1974.

C.1.1.3 Program Implementation

Mr. Delappa served as the initial Project Director of the Miami project, and his first employee was an Administrative Assistant who had been working in the State Attorney's Office. The formal date for project implementation was May 1975, but Mr. Delappa took steps in April 1975 to insure that the project would be ready on time. Five professional mediators were contacted by Mr. Delappa, and they decided to participate in the new Citizen Dispute Settlement project. The mediators met together in training sessions and discussed procedures for conducting mediation sessions. The work of other projects such as the Columbus project and the Rochester Arbitration as an Alternative project was studied, and simulated dispute resolution sessions were held to further develop mediational skills. Recruitment of additional mediation personnel was quite easy, due to contacts the Project Director and the first group of mediators had with other professionals in the community. Space was acquired at the Metropolitan Justice Building, and the project officially began operations on May 1, 1975.

C.1.2 Program Caseload

The project's first full calendar year of operation was 1976. During that year a total of 4,149 cases were screened by the project. Eight hundred of the cases were not accepted by the project because the complainant did not have an ongoing relationship with the respondent, the charge was too serious, the client had lost reality contact and needed counseling rather than mediation, etc. Of the remaining 3,349 cases, 2,166 (65 percent) were reported to have been resolved through hearings. A resolution was considered to have been achieved if the parties had arrived at a verbal or written agreement, or if a successful rehearing occurred, or if the "parties although adamant in a non-conciliatory stance, realized that further action is counterproductive." One thousand, one hundred twenty-seven cases were resolved without hearings, as indicated by either the complainant or the complainant and the respondent not appearing at the hearing. Fifty-six cases had hearings at which no resolution was obtained or a decision was made by the Project Director to return the case to the State Attorney's Office, sometimes with a recommendation for prosecution. Approximately 25 percent of the cases processed by the Miami project have been categorized as civil in nature by the project. These cases include animal complaints, neighborhood problems, landlord-tenant disputes, consumer complaints, and domestic problems such as visitation problems. The average time from initial contact with the project to a hearing was seven days during 1976 as compared to an average of over two months for cases disposed of by the State Attorney's Office. The project's annual budget totals $150,000 with personnel expenses accounting for $108,408 of the total and mediation expenses totaling $31,824.

C.2.0 Current Operations

The Miami Citizen Dispute Settlement Program is located in the Metropolitan Justice Building not far from the downtown area of Miami. The building houses courts and the State Attorney's Office and makes referral operations convenient. The building has substantial security precautions and provides an "official" environment for the night time dispute hearings. The project has three branch offices due to the great size of the Dade County area and the inconvenience of the central office location for citizens in some areas of the county. The offices were temporarily closed

due to problems with costs associated with branch offices. Branch offices are located in the South Dade Government Center, the Miami Beach County Court, and the North Dade County Court. These branch offices are located in branch court buildings convenient to outlying sections of Dade County.

C.2.1 Case Criteria

The Miami project processes a wide range of cases. The project points out in its grant application that nine particular offense areas are particularly amenable to the project's services. These offense areas are ranked in order of priority as disorderly conduct, assault and battery, malicious mischief, trespass, animals, family and child, possession of stolen property, petty larceny, and loitering. The project notes that these nine offense areas comprise 60 percent of the total number of misdemeanors that enter the Miami judicial system according to the records of the Administrative Office of the Courts. The project estimates that at least 50 percent of the offenses occurring in the above categories involve disputes among those with ongoing relationships such as neighbors, relatives, etc. Detailed summaries of the specific offenses processed by the project are not available. The project points out that assault, battery, threats of violence, malicious destruction of property, and improper telephone calls are particularly prevalent in the caseload. The project has many of its case records transcribed on computer cards, and will have highly detailed data reports if and when funds are received to support an evaluation study of the project. In addition to the various criminal offenses cited above, the project also handles a substantial number of civil complaints such as landlord-tenant disputes, neighborhood problems, consumer complaints and domestic problems. In these civil matters, the complainant must have a specific respondent against whom the complaint is lodged. The project does process cases in which the complainant is disturbed by the operations of an institution but has no specific disputant within that institution with whom an ongoing relationship exists.

As in the case of many projects, the Miami project does not have a means for accurately estimating whether the cases selected by the project would have been processed through many stages of the criminal justice system. Clearly, many of the matters involve events which are technically chargeable as criminal offenses, but

it is not clear what proportion of these cases would have been removed by the prosecutor's screening clerks or would have been voluntarily withdrawn from the system. The earlier cited evidence of 35 percent of the docketed cases being dismissed for lack of prosecution by the complainant suggests that considerable attrition occurs. The Citizen Dispute Settlement project saves the system considerable trouble in these cases by eliminating them from prosecutor processing and docketing altogether. Some of these cases may have never reached the docketing stage, however, and research is needed to determine the rates and stages of case attrition for various types of offenses.

C.2.2 Referral Sources

The project receives the majority of its referrals from the paralegal intake screening clerks at the State Attorney's Office, according to Linda Hope, the current Project Director. The clerks review misdemeanor cases with complainants and refer cases which meet project case criteria to the project intake counselors. The project and its intake counselors are located in the same building as the State Attorney's Office staff, minimizing inconvenience for the complainant. The intake counselors interview the complainant to determine whether the dispute is suitable for mediation or would be more effectively processed by another agency. Possible referral agencies for cases judged to be unsuitable for mediation include legal services, the consumer protection agency, welfare and the small claims court. When a case is judged to be appropriate for mediation, a hearing is scheduled and the respondent is mailed a Citizen Dispute Settlement Center Notice to Appear and a letter notifying him that a complaint has been lodged and that a hearing is set for the specified time.

The project also receives referrals from the Miami Police Department, the Public Safety Department which provides police services for the unincorporated areas of Dade County, and town police departments within the county. The Public Safety Department has a crisis intervention unit termed the Safe Streets Unit. This unit was established in 1971 with LEAA funds, and has provided the Citizen Dispute project with numerous referrals. The officers in the unit are highly trained in family crisis intervention, crisis management, etc. The other police departments in Dade County have typically provided far fewer referrals to the project

than the Safe Streets Unit of the Public Safety Department. Plans are being developed for a similar unit within the Miami Police Department and it is anticipated that such a unit would be active in making referrals to the Citizen Dispute Settlement project.

Additional referrals come to the project from community organizations familiar with the project, and directly from individuals who have learned about the project through direct exposure or through the media. A small percentage of referrals are made from the bench, and on occasion judges have sent disputants directly from the courtroom to the project for immediate mediation of a complex dispute.

The project has four intake counselors to process incoming cases. One of the counselors has sole responsibility for making referrals to social service agencies for persons who have completed mediation hearings. All of the counselors make referrals as appropriate at the time of intake. The counselors are trained to carefully process referral cases and to show concern for clients. Counselors encourage clients to return to see them if their problems were not resolved at the mediation hearing or at any other referrals.

Letters sent to respondents for the scheduling of hearings are very official in appearance. Respondents are informed that "failure to appear may result in the filing of criminal charges based on the above complaint." If no criminal activity has occurred the respondent is merely advised that non-appearance may result in aggravation of the situation.

C.2.3 Resolution Technique

The project attempts to resolve disputes through mediation. The typical approach at a mediation session is for the mediator to obtain the forms describing the complaint from the clerk at the hearing and read them briefly to become familiar with the issues. The two parties are then asked to come with the mediator to a courtroom set aside for the specific mediator. The mediator and disputants sit around the table in front of the judge's bench, and the mediator explains the nature of the Citizen Dispute

Settlement Program. Disputants are informed that the proceeding is not a formal court procedure, that no decision of guilt or innocence will be made, and that the purpose of the hearing is to attempt to resolve the problems being experienced by the disputants. The complainant is then allowed to state the nature of the complaint followed by comments by the respondent regarding the complaint. The mediator then attempts to identify the issues in dispute and assist the disputants in reaching a settlement to the problem. No set approach is used by the various mediators in facilitating a settlement. The project feels that each mediator is a professional with a conflict resolution style that has been developed throughout the individual's career. The degree to which different mediators are directive in attempting to arrive at resolutions depends upon the mediator's past training and experience. If possible, the parties are encouraged to arrive at a written resolution to their difficulties which both parties sign. In cases where this type of resolution is not possible, the mediator does whatever is seen as possible to develop common ground between the disputants.

Cases are reviewed by the original intake counselor the day after the mediation session is held, and a number of courses of action may be taken. (1) In the case of written resolutions, the matter is closed and the original charge is dismissed. (2) If the complainant failed to appear, charges are automatically dismissed. (3) If the respondent fails to appear the case is discussed with the complainant and rescheduled for a hearing or recommended for prosecution if appropriate. (4) If the parties have failed to arrive at a satisfactory resolution, the case is reviewed with the complainant for possible recommendation for prosecution, and (5) regardless of the mediation hearing outcome, the parties may be referred to social services if requested.

C.2.4 Hearing Staff Qualifications

Mediators are professionals who are trained in dispute resolution techniques. Professional fields of training represented in the pool of mediators include psychology, law, sociology, and social work. A training program has been developed by one of the mediators who holds a Ph.D. in social psychology. This program insures that all of the mediators have had common experience in approaching the types of cases occurring at the Citizen Dispute

Settlement Program. Mediators are paid from $8 to $10 per hour depending upon their previous training and experience.

C.2.5 Project Organization

The current project staff includes eight full-time employees with the following positions:

(1) Program Director - responsible for overall operation of the program, including staff hiring, administration, and policy development. Both the current Project Director and the past Project Director have been attorneys.

(2) Administrative Officer - responsible for assisting the Director in planning and developing the program and its operations. The Administrative Officer assists in selection of mediators and their training.

(3) Social Worker 1 - responsible for supervising the program's social service referral component including the development of a social referral manual, and training new Intake Counselors.

(4) Intake Counselors - responsible for operation of the central and branch office intake procedures. Three Intake Counselors are currently working at the project and their hours rotate so that one Intake Counselor is assigned each night to assist in mediation hearing scheduling and operation.

(5) Secretary - responsible for clerical functions and some administrative duties.

(6) Receptionist - responsible for some clerical functions plus assisting visitors, handling phone calls, etc.

In addition the project has over twenty mediators available for the conduct of mediation hearings. Recruitment of mediation staff has been easy for the project due to the extensive contacts of the project staff and the current mediators. The project has experienced moderate staff turnover. The original Project Officer

left the program in March, 1977 and was replaced by a lawyer who was highly familiar with the Dade County court system. The Administrative Officer has been with the project since its inception.

C.2.6 Staff Training

A training program for mediators was recently developed by a mediator who has a doctorate in psychology. The mediator's training program contains a variety of modules covering a range of topics. Materials deal in part with theoretical aspects of mediation, and the focus of this instruction is upon the structural context of the parties' relationship, the personal characteristics of the parties, and the existing pattern of relations between the parties. Observational sessions are held in which mediators observe role-played mediation sessions, and also participate in role playing. Detailed instructions are provided regarding the use of social influence strategies to assist parties to arrive at a resolution. Finally, new mediators are given the opportunity to co-mediate sessions with experienced mediators. Mediators follow these experiences with detailed discussions and attempt to analyze the processes which occurred during the sessions. The project director is planning to develop a training manual which will be used in conjunction with co-mediation.

C.2.7 Goal Achievement

The project's achievements in case processing were discussed at length in the earlier section dealing with the program caseload. As was noted, the project had a total case intake of 4,149 in 1976. Ninety-eight point sixty-five percent (98.65%) of the cases were reported by the project to have been resolved by hearings, failure of the complainant to pursue the complaint and appear at the hearing, and referral to other agencies. The remaining 56 cases were returned to the State Attorney's Office for prosecution. A report on project operations in 1975 noted that the project's average caseload of that time of 266 cases per month enabled the project to process approximately 62 percent of the State Attorney Misdemeanor Crimes Intake. As in the case of other projects, the

exact impact of the project upon caseloads in the prosecutor's office and upon the courts is difficult to estimate, because it is not clear how many of the project's cases would have been rejected for prosecution or would have spontaneously dropped out due to the complainant's decision not to pursue the complaint. The paralegal screening staff at the prosecutor's office eliminate a portion of the cases presented to them for a variety of reasons. It should be stressed that the project is likely to be providing a valuable service in the case of disputes which would not have reached the court. The project attempts to resolve disputes rather than allow them to continue and perhaps grow to significant proportions. To the extent that the project is successful in resolving disputes, future police, prosecutor and court time is likely to be saved.

As was noted earlier, the project is currently seeking funding for an evaluative study of the project's achievements. The project has records on over 6,000 cases, and provides an impressive range of possibilities for the study of conflict resolution activities. If the evaluation is funded, the project will be able to provide answers to many questions regarding case types, case flow, the impact of the project on different types of disputes, etc.

The Miami project has attempted to estimate the cost savings resulting from the operation of the project. Three separate estimates have been provided by the project. The project assumes that the cost per case is $36.14 (total project cost of $149,954 divided by total number of matters of 4,149). Matters are defined as all cases received at intake, regardless of whether or not the case reached the hearing stage. The project also assumes that the average cost to process a case from State Attorney intake to the courtroom is $250. In the first analysis the project simply subtracts project costs ($149,954) from the estimated cost to process 4,149 cases to the courtroom ($1,037,250). In the second analysis the project only includes cases which were judged by the project to be criminal matters which were technically prosecutable. Two thousand, two hundred ninety-three cases met this criteria, and the difference between the criminal justice system expense to prosecture these cases to the courtroom and the Citizen Dispute Settlement project was estimated to be $423,296. In the third analysis the project adjusted the figures to account for the expenses of the State Attorney's paralegal staff in screening the cases, and the estimated savings from this third analysis was $487,977.60. The project stresses that the various estimates

cannot provide exact indications of cost savings. The expenses associated with normal case processing within the criminal justice system in Miami are not known, and marginal expense data would be most relevant. The degree to which cases would penetrate the criminal justice system is also not known. Research is needed to more clearly provide estimates of the costs and benefits of mediation projects.

C.2.8 General Observations

The Miami project has a number of features which distinguish it from the other projects reported in this study. The project uses professional mediators rather than community members or law students; the project is attached to the administrative office of the court rather than to the prosecutor's office or an independent organization (although the relationship to the prosecutor's office is very close); the project has operated branch offices as well as a central office; and the project holds hearings in courtrooms rather than more informal meeting rooms.

The project's planned evaluation study, if funded, will provide a wealth of information regarding dispute settlement processes. The project has a very large backlog of case data which could shed light on the types of cases which are most amenable to mediation, and upon patterns of disputes among citizens.

Future funding of the project is not established as of the present. The project will receive LEAA block grant funds through December, 1977 and perhaps will be assimilated into the city or county budget after federal funding is completed.

Case Study D:

The New York Institute for Mediation and Conflict Resolution Dispute Center

D.1.0 Introduction

The Institute for Mediation and Conflict Resolution (IMCR) Dispute Center began operation in June 1975 with Law Enforcement Assistance Administration (LEAA) funds. The Center is sponsored by the Institute for Mediation and Conflict Resolution, a non-profit organization which was established in 1970 under a Ford Foundation grant to train people in mediation techniques. The Dispute Center receives referrals from throughout Manhattan and the Bronx, and is currently developing an experimental branch office in Brooklyn. The total population in the area served by the Center exceeds three million. The Center is located in an office building in Harlem and is accessible to both Manhattan and the Bronx by public transportation. The project receives case referrals from a wide range of sources including specific police precincts, the Summons Court, the Criminal Courts of Manhattan and the Bronx, and walk-ins. Project clients must agree to binding arbitration, although project arbitrators successfully arrive at mediated settlements in the vast majority of the cases. Community members serve as arbitrators and receive intensive training from the IMCR. Hearings are conducted within eleven days of initial contact with the Center on the average. The Center accepts a wide range of cases, and its guidelines specify thirteen violations and misdemeanors (such as harassment, assault third degree, etc.) for primary consideration. Generally disputants are expected to have an ongoing relationship. Arbitration agreements are prepared following all hearings reflecting the terms of the mediated or arbitrated agreements achieved, and these agreements are enforceable in the civil courts.

D.1.1 Program Development

Planning for the IMCR Dispute Center began in April 1974. Ann Weisbrod and Sandi Tamid, who were then employed by the Department of Corrections, developed the concept of establishing a mediation project which would receive referrals directly from two of

Manhattan's police precincts. The two women believed that a program receiving direct police referrals would eliminate major case processing costs from the courts and would also reach the disputants quickly and effectively. Police in the target precincts and in central police headquarters supported the plans for the project. Ms. Weisbrod and Ms. Tamid received funds from two foundations to study similar projects and plan the New York project. The Columbus Night Prosecutor Program and the Rochester Community Dispute Services project were visited and discussions were held locally with members of the Jewish Conciliation Board and the Bronx Neighborhood Youth Diversion Project. Legal and social science literature was also explored to gain information on possible mechanisms for project operations. A concept paper was developed in June 1974 and conversations were held with the staff of the Institute for Mediation and Conflict Resolution. A decision was made to have the Institute sponsor the project, and to request funds from the Law Enforcement Assistance Administration.

D.1.1.2 Proposal Preparation

Discussions were held between the Institute for Mediation and Conflict Resolution and the staff of the local criminal justice coordinating council during the summer of 1974. The initial concept paper prepared by Ms. Weisbrod and Ms. Tamid was expanded upon and a proposal was submitted to the criminal justice coordinating council for review at the council's December 1974 meeting. During the period of proposal preparation, the project's concept was discussed with various leaders in the New York criminal justice system. The project received the enthusiastic support of the relevant precinct commanders and police department administrators during the period of proposal preparation.

D.1.1.3 Grant Processing

The IMCR proposal was submitted in October 1974 to the Law Enforcement Assistance Administration for block grant funding. The proposal was considered at the December 1974 meetings of the local criminal justice coordinating council and the State Planning Agency. The proposal was approved with a start-up date of March 1, 1975. The initial grant award was for $306,000.

D.1.1.4 Program Implementation

The three month period from March 1 to June 1, 1975 was devoted to hiring project staff, locating facilities for the project, and recruiting and training mediators. Mediators were recruited from the community primarily through personal contacts of the staff and the Institute for Mediation and Conflict Resolution. The Institute had an extremely wide range of contacts with community members due to its extensive training program in dispute resolution techniques. At the time the IMCR Dispute Center was seeking mediation staff, the IMCR had already trained a diverse group of approximately five hundred community members in mediation techniques. The combination of some of these individuals with new individuals contacted through them resulted in the IMCR having the ready capacity to develop a panel of mediators differing widely in age, sex, ethnicity, and socioeconomic status. Training of the new mediators was conducted by the IMCR and involved the use of role playing, case studies, videotaped feedback of performances in simulated mediation sessions, observation, and finally co-mediation with an experienced mediator. Two training cycles were held during the project's first year, and a total of 53 community volunteers participated in the four-week training course. In addition, all relevant police personnel in the project's six referral precincts received training to inform them of appropriate cases to refer to the project and procedures for referrals. The project began receiving referrals in June 1975 when referral mechanisms for two of the police precincts were established. One additional precinct was added in August, three more in October, and in November the Housing Authority Police assigned to the six target precincts began to provide referrals.

D.1.2 Program Caseload

The IMCR Dispute Center received a total of 1,657 referrals during its first ten months of operation (from June 1975 through March 1976). Data are not available on the categories of specific offenses represented in the initial referrals. Seventy-seven percent of the referrals were received from the police department, 19 percent from the Summons Part of Criminal Court (based on three months of operation) and four percent from other sources such as the District Attorney's office, related agencies, etc.

Of the initial referrals, 662 were not processed to a hearing because the complainant decided to cease further action. A random sample of these cases was studied during the first year and it was observed that in each instance, the dispute had been resolved and the matter was not taken back to the police. 182 of the referrals were returned to the court because of the defendant's criminal history, the lack of a prior relationship between the complainant and the respondent, etc. 238 of the referred respondents did not appear at the project after the initial referral, and some of these cases may then have been processed by the court although records are not available to determine whether prosecutions occurred. Mediated hearings were scheduled in the remaining 575 cases. Of this group the respondent failed to appear in 23 cases and the parties resolved the dispute prior to the hearing date in 146 of the cases. The project has noted in its first annual report that the combined total of the cases in which the complainant did not appear at the Center and continue the complaint (662) and the cases scheduled for hearing which were either resolved at the hearing or prior to it (552) represent 73 percent (1,214) of the initial referrals. The cases in which the complainants failed to process the case through the Center appear to have been resolved by the disputants themselves, according to a study of a sample of the cases by the Center. The Center points out that many of the complainants stated that the mere availability of the Center made resolution of the complaint possible by providing time for resolution without further police or court action. A thorough study of complainants who fail to pursue mediation hearings would be helpful in determining precisely the causes for their retraction of the complaint. Table 1 presents a summary of the relationships among disputants referred to the Center. As can be seen, spouses and neighbors make up the majority of the referrals, with friends, relatives, and landlords or tenants constituting many others.

D.2.0 Current Operations

The Dispute Center is currently located in an office building in the Sugar Hill section of Harlem. The building is owned by a local church. One floor of the building is occupied by a private school and other community organizations are also housed there. The Center was previously located in a brownstone also owned by the church, and moved due to the need for more space. The Center is located near the City College of the City University of

New York, and is convenient to public transportation. The location is central for clients coming from Manhattan and the Bronx and rent is quite inexpensive compared to many other Manhattan locations. The Harlem setting may discourage some potential clients from other parts of the city although the project reports that the location is rarely a problem particularly because of the proximity of the City College. The project will be opening an office in Brooklyn in the near future, and that office will focus on felony cases and will be evaluated by the staff of the Vera Institute of Justice.

D.2.1 Case Criteria

The IMCR Dispute Center accepts a wide range of cases for arbitration. The project initially established referral procedures for thirteen specific offenses which were considered "to occur between people who knew each other and thus would be amenable to mediation." The offenses included various degrees of harassment, disorderly conduct, reckless endangerment, menacing, assault, trespass, misapplication of property, custodial interference, and criminal mischief. Cases referred to the Dispute Center fall primarily in these categories, although some additional types of cases are processed when mediation appears to be useful. As with many mediation projects, discussions with the disputants often reveal that other charges are relevant which were not discussed with the referral source. The project attempts to resolve whatever issues are presented by the disputants. If Family Court matters are presented at the hearing, the Center is not permitted to arbitrate a resolution (e.g., for custody and child support). Attempts are made to mediate these cases when they arise, and if mediation is unsuccessful, the parties must go to the Family Court to resolve their differences. The project would be willing to arbitrate Family Court matters if given authority from the Family Court to do so, and if funds were available to increase the staff size to handle these matters. The project is free to arbitrate common law separation cases because they fall outside of the Family Court's jurisdiction. The Center has begun to take referrals from the Criminal Courts in both Manhattan and the Bronx and is now receiving some felony cases as well as misdemeanors. These felony cases have included rape, robbery, burglary, kidnapping, grand larceny, and second degree assault. As in the case of many mediation projects, the Center does not have a means

for accurately estimating whether the cases selected by the project would have penetrated deeply into the criminal justice system. The felony cases and police arrest cases which are now being received in all likelihood would have been prosecuted, but many of the misdemeanor cases may have been screened out by the Summons Court, and not proceeded further into the system.

D.2. Referral Sources

The Center received the majority of its referrals from the police during its first year of operation. With the development of referral procedures with the Summons Part of the Criminal Court late in the project's second year, the majority of cases have been referred from the Summons Court. In addition to the police and Summons Court, the Center also receives referrals from the Criminal Court and walk-in [illegible]es.

Police referrals are received from six Manhattan precincts (all North of 110th Street) and five west Bronx precincts. These precincts are the ones closest to the project's location and were thus judged by the police to be the most appropriate precincts for referral. (Court referrals come from throughout Manhattan and the Bronx and are not geographically limited). The Housing Authority Police in the relevant precincts also make referrals to the project. In cases in which no arrest is made and yet the case meets project criteria for referral, the police officers prepare a mediation referral form and give a copy to the complainant instructing the complainant to appear at the Dispute Center within 72 hours to initiate mediation hearings. The police also forward a copy of the referral form to the Center and file a copy of the form at the precinct station. In cases in which a defendant is arrested and given a "stationhouse release" a Dispute Center staff member, who is an ex-police officer, reviews the case to decide if it is appropriate for referral to the Center. A name and fingerprint check is made to determine the defendant's past record and the existence of any outstanding warrants. These cases are reviewed at the Court Division, Manhattan Criminal Court Unit #1, Court Attendance Section, the unit that receives all stationhouse release (desk appearance ticket) case materials. If the case seems appropriate for Dispute Center mediation, the intake officer requests approval for referral to the Center from the Director of the Early Case Assessment Bureau of the

Manhattan District Attorney's Office. Upon completion of the mediation process, the complainant officially withdraws all charges and fingerprint and photograph records are returned to the respondent.

Summons Court referrals are processed by two IMCR staff members located at the court. The Summons Court, located in lower Manhattan, receives cases from Manhattan, the Bronx, Brooklyn, and Queens. The Summons Court serves as an initial screening device in the New York court system. The complainant and the respondent receive "request to appear" notices after a complaint is presented for a misdemeanor. On the scheduled date they appear before a judge briefly for review of the merits of the case and a decision whether charges will be brought. Judges dismiss a high percentage of cases appearing before the Summons Court and admonish the defendents to mend their ways or face prosecution. The IMCR referral mechanism intervenes in the Summons Court procedure, and the court clerk refers individuals with complaints amenable to mediation from Manhattan and the Bronx to the IMCR intake workers at the court. The Dispute Center staff explain the mediation process to the complainant and if mediation is successful, the court is notified that the case can be dismissed from the court docket. The original procedure, when the project first initiated Summons Court referrals, was for complainants to receive "request to appear" notices at the time of making the complaint and to have a hearing before the judge scheduled for the normal six weeks after the complaint was presented. This procedure enabled the IMCR Dispute Center to process referred cases prior to the court hearings, and to eliminate the need for these hearings when successful. Recently, the Summons Court has moved to reduce its backlog to only a one week delay by hastening case processing. The one week period between initial complaint and hearing before the judge is not sufficiently long to enable the IMCR project to receive and process referrals. Summons Court referrals have dropped dramatically, and now the project typically receives referrals from the judges at the Summons Court rather than directly from the court clerk at the time a complaint is presented.

Criminal Court referral procedures are in operation in both the Manhattan and Bronx Criminal Courts. Interpersonal misdemeanor and felony arrest cases are referred to the Dispute Center with the concurrence of the Assistant District Attorney reviewing the case, the legal aid attorney and the complainant and the defendant.

Cases referred to the project are either "adjourned contemplating dismissal" or adjourned pending mediation-arbitration. Successful mediation typically results in the case being dismissed at the next court hearing.

Walk-in cases are processed by intake workers located at the Dispute Center. These cases typically make up a small proportion of the Center's caseload, and arise from referrals from other agencies, awareness of the project by the complainant due to word of mouth or the media, etc.

Complainants fill out and sign Mediation-Arbitration Submission Forms to initiate participation in the IMCR project. The respondent is then sent a notice and requested to come to the Center within 72 hours. The mediation process is explained to the respondent, and the respondent is requested to sign a Mediation-Arbitration Submission Form. Once both parties have signed the forms, a hearing is scheduled, typically 10 to 14 days following the date the complainant initiated the complaint. Parties to the dispute are informed of the legal enforceability of the arbitrator's award at the time they sign the Submission Form.

D.2.3 Resolution Technique

The project strongly favors mediation as the means to arrive at a resolution to the disputant's problem. Mediators resort to imposed arbitration agreements only in rare cases in which the parties cannot arrive at a mediated settlement. All agreements whether mediated or arbitrated are written up as Arbitration Awards. These awards are enforceable under Article 75 of the New York Civil Practice Laws and Rules in the Civil Term of the Supreme Court.

The number of mediators handling a case varies from one to three depending upon the nature of the case, the mediator's ability, case volume, etc. Sessions typically have three phases. In the initial phase, the disputants are given the opportunity to present their versions of the situation, and to air their grievances. This phase can at times lead to the disputants resolving their

differences through negotiation or redefinition of the situation. Release of pent-up hostility in this phase of the session can be cathartic for disputants and can help to prepare the way for an agreement. The panel of mediators then attempts to mediate the dispute by defining issues, identifying areas in which the disputants agree, and isolating areas of disagreement. If necessary, caucuses are held with the disputants individually to determine the disputant's needs and requirements. These private meetings are valuable because disputants can often be more candid about possible compromises to the mediation panel than they can to the other disputant. The disputants are then brought back together, and further efforts are made to arrive at an agreement that is satisfactory to both parties. In rare cases (approximately 5 percent), the panel's efforts to mediate a settlement are unsuccessful and an arbitrated agreement is required. In these cases the panel meets after the session is over, reviews notes taken on the case, and formulates what it considers to be a fair agreement. The disputants are informed of the imposed agreement by mail.

The average length of mediation hearings is two hours. The majority of cases are resolved in one session with occasional cases requiring two or even three sessions before resolutions are reached. Approximately half of the hearings are held during the daytime while the remaining hearings are held after five p.m. The Dispute Center has an active social service component. The staff social worker refers disputants to social service agencies when appropriate and also serves as the implementor of mediated agreements. The social worker contacts parties who are reported to not be abiding by the provisions of the arbitrator's award and warns them of the civil sanctions possible for non-compliance. Roughly an equal number of complainants and respondents requests assistance from the social worker in maintaining compliance with the arbitrator's award. The social worker contacts all parties to mediated-arbitrated cases thirty to sixty days after the hearing to determine if the agreement is being honored and if additional social service assistance is needed.

As in the case of the Rochester project, the procedure for enforcing the agreement involves making a motion to the Civil Term of the New York Supreme Court (often termed the superior court in other jurisdictions) to confirm the arbitrator's award. If confirmed, this motion is followed by a motion for a specific

judgment (in the case of monetary awards) or a contempt of court action in the case of behavioral agreements. The staff of the IMCR Dispute Center have prepared a sample affidavit for enforcement of awards, and assist disputants in filling out their forms if necessary. Court fees are waived for disputants filing affidavits from the IMCR Dispute Center due to an agreement with the Assistant Administrative Judge of the Civil Branch and the County Clerk of the New York Courts. Very few of the project's cases have required enforcement; generally warnings by the project social worker have sufficed to eliminate non-compliance with the agreements.

D.2.4 Hearing Staff Qualifications

Mediators are community members and are selected to provide diversity in age, sex, ethnicity, and socioeconomic status. As was noted above, the Institute for Mediation and Conflict Resolution had five years of experience in training community members in mediation skills prior to the development of the IMCR Dispute Center. Over 500 community members had been trained in the period prior to the development of the Dispute Center, and the IMCR thus had a wide range of community contacts through which to locate appropriate mediators. Once selected, mediators received extensive training by the Institute for Mediation and Conflict Resolution.

D.2.5 Project Organization

The current IMCR Dispute Center staff consists of 14 persons:

1. Executive Director - responsible for overall supervision of the project, coordination with relevant agencies, and preparation of funding agency reports.

2. Center Director - responsible for the supervision of the day-to-day operation of the program including direct supervision of subordinate staff.

3. Intake Coordinator - responsible for coordination of the entire intake process and mediation sessions, including scheduling of all mediators and maintenance of all related records.

4. Police Liaison - responsible for the training of police officers to insure maximum use of the referral process, also assists the District Attorney's office and the police department in selecting appropriate desk appearance cases (stationhouse releases) for referral.

5. Social Worker - responsible for contacts and referrals to social service agencies and the follow-up and enforcement procedures for all mediated cases.

6. Intake Workers - responsible for processing referrals to the project, two are located at the Summons Court (one is designated the supervisor), two are located at the project headquarters, one is located at the Bronx Criminal Court, and one is located at the Manhattan Criminal Court.

7. Fiscal Officer - responsible for the preparation and maintenance of the project's fiscal records and reports.

8. Administrative Assistant - responsible for all office managerial duties, clerical records, etc.

9. Receptionist - responsible for receiving all guests, handling incoming telephone calls, typing arbitration awards, etc.

In addition over fifty community members serve as mediators. Mediators are paid ten dollars per scheduled mediation session, and some mediators serve on more than one hearing in a given day. The project has had moderate turnover in project staff over the life of the project. Many staff have been with the project from its inception including the executive director, center director, police liaison, social worker, and the administrative assistant.

D.2.6 Staff Training

The mediation staff receive highly sophisticated training in mediation and arbitration techniques from the staff of the Institute for Mediation and Conflict Resolution. The Institute has its headquarters in mid-town Manhattan, and training sessions for mediators are structured in cycles. A given training program includes four weeks of intensive work at IMCR, totaling fifty hours of training. Sessions are held on Monday and Wednesday nights and all day Saturdays. Participants are involved in role playing, discussions regarding mediation techniques, and learn a variety of approaches to mediation and arbitration. Videotape feedback of simulated mediation sessions is provided to participants to indicate any specific problems the participants may have in mediational style. The IMCR headquarters has elaborate facilities available for the videotaping of these simulated sessions. At the end of the training program the new mediators are sworn in by a judge and informed of their duties with regard to the confidentiality of their clients' information. New mediators receive training at the Dispute Center as well and serve on panels with experienced mediators who assist them in learning about effective approaches to mediation.

Workshops are held once each month to provide mediators with an opportunity to discuss mutual problems. As was noted earlier, police officers also receive training in the value of the mediation program and in methods of making referrals. The New York Police Department has developed a training film for the police to assist in the training of police in the uses of mediation.

D.2.7 Goal Achievement

The IMCR Dispute Center maintains relatively detailed summaries of its case-processing achievements. In the project's first 18 months of operation (June 1, 1975 through November 30, 1976), 5,150 referrals were received. Mediation hearings were scheduled in 1,690 cases. In 72 cases the respondent failed to appear, while the remaining cases were resolved by mediation-arbitration (974), by the parties prior to the hearing (523) and by the Center's social service unit through appropriate referral. The 974 hearings comprise 19 percent of the total referrals. The

project held on the average of 54 hearings per month for the initial 18 month period, and more recently hearings have averaged over 100 per month. The various sources of elimination of cases prior to the time of scheduling for hearings were discussed earlier in the section on the project's first year caseload. As was noted earlier, the majority of cases involve neighbors or spouses, with friends, landlord-tenants, and relatives making up the bulk of the rest of the cases. Only four percent of cases involved strangers. Project data on the content of the arbitration awards indicate that the most common agreements involve requesting a disputant to stay away, to refrain from physical violence, to apologize, or to provide for means for structured communication. The average time from receipt of a referral to resolution was 13 days.

Only 5.6 percent of the cases processed by the Center have been arbitrated, with the remaining hearings resulting in mediated settlements. Approximately ten percent of the hearings have been held in Spanish, two percent in combined Spanish and English, a few in Chinese, Italian, and Haitian and the remainder in English.

Of the 974 mediated-arbitrated cases processed in the project's first 18 months, only 79 have required warnings to parties for non-compliance with the terms of the agreement and only three have needed court enforcement of the agreement. In the course of follow-up contacts with clients to determine whether agreements are being maintained, the project's social worker has found that clients are "extremely satisfied with both their treatment at the Center and the mediation process in general."

The project's data indicate that, for the first ten months, mediated cases required project intervention for maintenance of the arbitrator's agreement less often than arbitrated agreements (7.9 percent versus 23.1 percent). Comparable data for more recent cases are not provided. This finding is intriguing, since it may indicate that the project is correct in assuming that mediated agreements are more durable than arbitrated agreements. The small number of arbitrated agreements for this period (26) versus the much larger group of mediated agreements (353) makes interpretation of the finding difficult, however. The difference may also only reflect the inherently greater animosity occurring

in those cases that need arbitration rather than mediation for a settlement technique. An experiment that randomly assigns mediation or arbitration approaches to clients could test this hypothesis only partially. The study would be severely limited in many respects because parties could refuse to arrive at an agreement in a pure mediation approach and could rush to a mediated settlement before the arbitrator had time to arbitrate in the pure arbitration approach.

As in the case of other projects, the impact of the IMCR Dispute Center upon court and prosecutor caseloads is difficult to estimate because it is not clear how far the cases processed by the project would have penetrated into the criminal justice system. Cases referred by the police may have been likely to have been dismissed at the point that they reached the Summons Court, and likewise many cases diverted from the Summons Court may have been dismissed at the Summons Court hearing. The fact that the cases would have been dismissed does not necessarily indicate that the IMCR project is not providing valuable service to the courts. Cases dismissed from the court can easily appear later with new or more serious charges. No data are available on the rate of return of these cases to the Summons Court or the Criminal Court. Similarly, these dismissed but unresolved cases can require police resources in police attempts to maintain the peace among the disputants. Project data discussed earlier indicate that the resolutions achieved by the project in mediation hearings appear to be durable.

The project budget for the next grant period (7-1-77 to 3-31-78) totals $239,556. Expenses include $129,667 for personnel, $19,450 for fringe benefits, $1,500 for data processing and consultant fees, $3,426 for office equipment, $4,200 for supplies, $900 for travel, $11,339 for rental of space, $13,500 for mediator stipends, $7,500 for training and the remainder for miscellaneous expenses (e.g., overhead, phone, postage, insurance).

The project's cost per case is approximately $270 per case hearing projecting from recent caseloads of roughly 100 cases/month and an annual budget of approximately $270,000. Detailed data on the costs of processing cases through the New York courts are not available. Comparable data for Rochester indicate that marginal costs for misdemeanor bench trials may be as high as $657 and for jury trials as high as $1,450.

D.2.8 General Observations

The Institute for Mediation and Conflict Resolution Dispute Center is an interesting and apparently effective attempt to resolve disputes through a combination of mediation and arbitration. The project has been very successful in achieving mediated settlements from clients, and these settlements have tended to be durable. Additional data are needed on the outcomes of disputes in which complainants fail to take the referral advice to participate in the IMCR program and cases which are scheduled for hearing but are reported by disputants to be resolved prior to the hearing. The project may provide an incentive for these disputants to resolve their differences. Hard data are needed, however, to determine if this is the case or if the clients are simply intimidated or frustrated with institutional efforts to resolve their problems.

The IMCR project operates in a very difficult environment. The fiscal problems existing in New York are well known. The sheer enormity of the target population, the wide variety of police agencies, courts, etc., all of which require intake staff for referrals, the widespread existence of poverty, and the great cultural diversity of the community make operation of a dispute settlement project in New York an awesome task. The project director's observation that "if it can work here, it can work anywhere" is quite compelling when the obstacles existing in New York are compared to those existing in most other communities.

The Institute for Mediation and Conflict Resolution is currently establishing a branch office of the Dispute Center in Brooklyn. This office will receive referrals from the Criminal Court in Brooklyn and will be studied intensively by the Vera Institute of Justice. The study will include an attempt to determine the cost-benefit aspects of the Brooklyn program, will present case studies and will measure the project's impact and processes.

The New York project has experienced some difficulties in receiving adequate numbers of referrals to process. Police referrals are not received at a sufficiently high rate partly because of the lack of arrest credit to officers making referrals to the IMCR. The project would like to have the police structure appropriate

"collar credit" incentives for officers referring cases to the IMCR project. Otherwise, an arrest for an appropriate case is simply more beneficial to the officer than a referral.

Future funding for the project is not clear. The project is currently supported by LEAA funds. The project does not feel that city funds are likely in the foreseeable future given the financial state of New York. A range of other federal and foundation sources are likely to be approached when refunding is required.

Case Study E:
Rochester American Arbitration Association
Community Dispute Services Project

E.1.0 Introduction

he Rochester Community Dispute Services (CDS) Project is operated by the Rochester Regional Office of the American Arbitration Association (AAA). The project officially began operations in July 1973; however, initial plans for the project were begun one and one-half years earlier. The project serves Monroe County, New York, which includes 19 towns, 10 villages and the City of Rochester. The population of Monroe County is 711,917 and 296,233 people live within the City of Rochester. The Rochester project is funded with Law Enforcement Assistance Administration (LEAA) block grant monies. The project offices are located in downtown Rochester in an office building near the court. The primary source of case referrals is the complaint clerk's office of the court; a project staff member is on duty at the clerk's office to process referrals. Project clients must agree to binding arbitration. Hearings are typically scheduled within eleven days of initial contact with the project with trained community members serving as arbitrators. A wide range of cases are accepted, including interpersonal disputes, municipal ordinance violations, bad check cases, and consumer complaints. Arbitration agreements resulting from hearings are enforceable in the civil branch of the county court. The project also arbitrates large scale community disputes and election disputes.

E.1.1 Program Development

Planning for the Rochester Community Services Project began in the fall of 1971. At that time heated debates occurred in Rochester regarding a school reorganization plan. Physical violence occurred and twenty-two widely divergent groups including parents, citizens, students and teachers agreed to negotiate their differences. Personnel from the National Center for Dispute Settlement of the American Arbitration Association served as mediators in meetings with the various groups. The National Center for Dispute Settlement was developed by the AAA in the late 1960's to apply the Association's capabilities in labor-management dispute settlement

to contemporary urban disputes. The negotiations on the school reorganization issue were successful after five months of effort by the mediators and the various parties. This successful experience in the use of mediation to resolve local disputes resulted in interest on the part of Rochester citizens in having a regional office of the National Center for Dispute Settlement in Rochester.

E.1.1.1 Proposal Preparation

An ad hoc advisory committee was established in 1972 to devise plans for the development of a dispute resolution project. The committee membership included individuals who had been on both sides of the interracial school reorganization debate. Committee members approached a wide range of local agencies in an effort to determine an appropriate source of funding for the project. Members of the mayor's office staff and staff members of the Chief Judge of the Appellate Court located in Rochester indicated that the Law Enforcement Assistance Administration would be a promising source of funding. Together these staff members, the committee members, and personnel of the Rochester local criminal justice coordinating council developed the grant proposal to LEAA under the sponsorship of the American Arbitration Association. Members of the advisory committee visited the Philadelphia Arbitration As An Alternative project during this period to develop and refine plans for the project's structure. Active support was received from Chief Judge Goldman of the Appellate Court, the prosecutor's office, the clerk of courts, the public defenders, the City Court, and the local bar. Mr. Joseph Stulberg joined the ad hoc committee in the late part of the summer of 1972 and contributed significantly to the development of the project. At the time Mr. Stulberg was serving as an attorney for homeowners attempting to receive flood relief funds and completing work on a doctoral degree.

E.1.1.2 Grant Processing

The Rochester proposal was submitted to the Law Enforcement Assistance Administration for block grant funding in Fall, 1972. The proposal was reviewed at the December 1972 meeting of the local criminal justice coordinating council and the grant was approved.

E.1.1.3 Program Implementation

The process of hiring staff began with the announcement of the grant award. Mr. Stulberg was chosen to be the Project Director. Other initial staff positions included an Associate Director, Coordinator responsible for training of mediators, Tribunal Administrator responsible for operation of the dispute settlement mechanisms, an Administrative Assistant and a Receptionist. Mediators were recruited from the community by contacts with community leaders, organizations such as schools, churches, etc., and meetings with community members. The panel of mediators was selected to represent a diverse range of demographic characteristics. Particular focus was placed upon the sex, race, and age of the mediators. Training of the mediators was conducted by staff members of the American Arbitration Association using a wide range of techniques including role playing, observation of mock mediation sessions, and co-mediation. (See Section 2.6). The total time required for hiring staff, acquiring office space and furnishings, and recruiting and training project mediators was approximately four months.

E.1.2 Program Caseload

The Rochester project processed 123 cases during the six months it was in operation in 1973. 1974 was the project's first full year of operation, and 877 referrals were received that year. Only 349 of the 877 referrals resulted in mediation hearings being held in 1974, however. This ratio of mediation hearings to referrals was modified greatly during 1975, and 513 of the 665 referrals received that year resulted in mediation hearings. The project attributes the low ratio of hearings to total referrals in the first full year of operation to a project policy not to require respondent's signatures agreeing to arbitration prior to their arrival at the session and also to the use of project stationery for letters requesting the appearance of the respondent. In 1975 procedures were changed so that respondents were required to agree to arbitration in writing prior to arriving at the office for the hearing and district attorney's office stationery was used for the request. The requirement of written agreements to participate prior to the hearing date enabled the project to phone respondents who had not returned the form consenting to arbitration and to inquire why the respondent had not replied. Project costs

during the first year of operation totaled $126,723, with approximately $78,000 devoted to the interpersonal arbitration component and the remainder to community group dispute resolution and training programs for local organizations.

E.2.0 Current Operations

E.2.1 Case Criteria

The Rochester project accepts a wide range of cases for arbitration. The cases include interpersonal disputes, violations of city regulations such as landlord/tenant disputes, bad check cases, and some consumer complaints. The project screening guidelines presented to members of the clerk of court's office and members of the district attorney's staff state that cases should be referred to the project if, (1) there have been prior repeated occurrences of the offense, (2) there appears to be a continuous underlying problem of which the charge is only a manifestation, (3) it is a family feud, (4) it appears that a neighborhood problem exists, i.e., noise, dogs, kids, common driveway, (5) it is a fight with a friend, (6) it is a "triangle" situation, or (7) it is a bad check over $25. The project generally does not handle cases which are appropriate for the small claims court and reports that the small claims court in Rochester is quite efficient in handling its caseload. The project may expand its case criteria to include cases which would otherwise go to Family Court in the near future. These cases would include support payment disputes, custody, and visitation rights; and the Chief Judge of the Family Court in Rochester is actively considering the integration of the Rochester Community Dispute Services project into his court's operations. The project maintains records on the types of cases which are processed by the project, and in addition to noting the case type (harrassment, assault, etc.) also notes client relationships, referral source, case disposition, processing time, degree of cross-filings, persons present at hearings, type of agreement, claimant and respondent attitudes, and the demographic characteristics of clients.

Data indicating the nature of case problems for 1975 are presented in Table 3.3.

Table 3.3
Nature of Disputants' Problems in 1975

DISPUTANTS' PROBLEMS	Number of Cases	Percentage of Cases
Harassment	215	50
Assault	70	16
Property Dispute	35	8
Dog or Other Animal	24	6
Bad Check	23	5
Other	22	5
Criminal Mischief	18	4
Contract Problem	18	4
Criminal Trespass	1	< 1
No Information	1	< 1
Total	427	

The project's case criteria have remained quite stable over time, and the distribution of cases received by the project is relatively stable. The project does not have a means for accurately estimating whether the cases selected by the project would have penetrated deeply into the criminal justice system. Clearly many of the matters involve events which are technically chargeable as criminal offenses, but it is not clear what proportion of these cases would have been removed from the system by screening clerks who operate the clerk of court's pre-warrant screening project. This project involves interviews with plaintiffs and defendants prior to the preparation of a warrant, and efforts are made to resolve the cases at the pre-warrant stage by the clerk's office.

E.2.2 Referral Sources

The primary source of referrals to the project is the clerk's office. The current procedure in that office for the processing of an apparent misdeanor case is to schedule a pre-warrant hearing three weeks from the time the case is reported. The defendant (respondent) is contacted and informed that a complaint has been made by a citizen against him and that an appearance is required at the specified time to discuss the complaint. The letter informs the respondent that criminal charges may be brought against him if he fails to appear. At the hearing a member of the clerk's staff and often a member of the Rochester Community Dispute Services project staff and an assistant district attorney discuss the allegation with the complainant and the respondent. An attempt is made to resolve the dispute at the time of this hearing. If the discussion is unsuccessful, the complainant will be referred to the arbitration project in cases judged to meet the project's case criteria, or formal court charges will be filed if court action seems appropriate. Many cases are resolved by the disputants prior to the pre-warrant hearing, and often the complainant or both the complainant and the respondent fail to appear at the hearing.

The Rochester Community Dispute Services project currently has a staff member working at the clerk's office. This Intake Worker has developed a close working relationship with members of the clerk's case screening staff and has been given the authority to refer cases to the Rochester CDS project directly from the clerk's office prior to pre-warrant hearings if the cases seem to clearly meet the CDS project's guidelines. In these cases, a letter is sent to the disputants advising them that the CDS project is an appropriate forum for the resolution of their dispute and that a meeting can be scheduled within ten days.

In addition to referrals from the clerk's office of the City Court in Rochester, the project also receives referrals from the clerks of the various town courts in Monroe County. Walk-in referrals also occur, and the Tribunal Administrator (see Staffing) serves as the intake screener at the project for these cases. Citizens who go directly to the project to have a case mediated generally have been advised to do so by the police or the staff of a community organization. News media coverage of the project has resulted in some walk-in cases based upon the citizen's

understanding that the project could be helpful. Generally walk-in cases are accepted for processing, and very little screening out of cases occurs at this stage.

As was cited earlier, both parties must agree to the binding arbitration of the project in writing prior to the hearing. Disputants are informed in detail by letter of the operational procedures of the project and of the enforceability of the arbitrator's award through action in the civil court.

E.2.3 Resolution Technique

The project feels that mediation is the best technique for the resolution of the types of disputes it processes, and each hearing begins with an effort to mediate the dispute. Only when mediation fails does the project resort to formal arbitration, in which the hearing officer makes a binding decision not previously reached by the two parties. Mediation is successful in the large majority of the project's hearings, and the mediation agreement arrived at is written in the form of an arbitrator's award so that the mutually arrived at agreement can be enforced in the courts. In rare cases, the project has changed the wording of its letters to the disputants to indicate that no binding award would be required in the hearing but rather that the case would simply be mediated. This type of procedure has been used in cases in which the offense was a minor matter and the staff is concerned that the respondent will be frightened away by the thought of binding arbitration and will not agree to appear at a project hearing. Disputants have the right to have an attorney present at the hearing but the project does not encourage this practice due to the expense to the disputants and the likelihood that an attorney could turn the discussion into an adversarial rather than a mediational process.

The typical protocol at a hearing involves an introduction by the mediator followed by a brief presentation of the complaint by the complainant and a response to the complainant by the respondent. If necessary the mediator will meet with each disputant individually following the joint discussion. These private meetings enable the mediator to determine what the "bottom line" settlement is for each of the disputants. The disputants are then brought back together again, and further attempts are made to

arrive at an agreement which is acceptable to both parties. As was noted above, the mediator takes on the formal role of an arbitrator, and imposes an agreement upon the parties only in cases in which it is felt that the mediational approach has been exhausted. Mediated rather than arbitrated settlements are preferred due to the greater likelihood that both parties will honor a settlement which was arrived at mutually. The average hearing lasts one hour and forty-five minutes. Rooms are scheduled so that hearings can be continued as long as it seems appropriate to the mediator, and no fixed time limit is set for termination of a hearing. Occasionally repeat hearings are scheduled in highly complex cases or ones in which additional specific information is needed to resolve the issues at hand. In these cases the arbitrator's agreement is not filled out until the second session. Once an arbitrator's award is made it is possible for the disputants to return and renegotiate the award if both agree that changes in the award are desirable. If one party fails to live up to the stipulations of the agreement, the other party can act to enforce the agreement in the civil court. The project is available to assist disputants in enforcing the awards where necessary. Before civil action is taken, however, the project contacts the other party to determine why the apparent breach of the agreement has occurred and whether the party is willing to rectify the situation.

The procedure for enforcing the agreement involves making a motion to the civil branch of the court to confirm the arbitrator's award. If confirmed, this motion is followed by a motion for a specific judgment (in the case of monetary awards) or a contempt of court action in the case of behavioral agreements. The use of the civil court sanction has been extremely rare, and the project has generally been able to resolve problems arising from apparent breaches of the arbitrator's agreement through contacts with the offending party. The Rochester project refers disputants to social service agencies where appropriate, both before and after hearings are held.

E.2.4 Hearing Staff Qualifications

Mediators are laymen from the local community. As was noted above, the project attempts to have a pool of mediators who are broadly representative of the community in terms of age, race, sex, and

socioeconomic status. The mediators receive extensive training from the project and both observe real mediation sessions and co-mediate sessions before they begin to mediate independently. Mediators are paid twenty-five dollars per case.

E.2.5 Project Organization

The current project staff includes the following positions:

1. Project Director - responsible for the overall operation of the project, liaison with community organizations, etc.

2. Coordinator - responsible for the training component of the program, federal and foundation grant applications, and is working on developing ties to the Family Court in Rochester.

3. Tribunal Administrator - responsible for scheduling dispute hearings, interviewing walk-in cases, and general administration of the panel of mediators.

4. Administrative Assistant - responsible for clerical support and maintenance of fiscal and other records.

5. Receptionist - responsible for some clerical work, greeting visitors, telephone answering, and some intake work on walk-in cases when the Tribunal Administrator is not available.

6. Intake Worker - responsible for intake screening of cases at the clerk of the court's office.

In addition, approximately seventy mediators are available at any given time to mediate cases. Recruitment of new panelists occurs when specific types of mediators are needed. For example, the project recently recruited additional senior citizens as mediators to balance the age distribution of the available mediators and provide older mediators for appropriate cases.

The project has had moderate staff turnover in the course of the past four years. The original Project Director left the project in 1976 to join the central office of the American Arbitration Association and was replaced by the current director. The position of associate director was phased out and his duties were added to those of the current Coordinator.

E.2.6 Staff Training

The project provides extensive training to the mediation staff. Forty hours of technical training in dispute settlement developed by the AAA are provided, including role playing, discussion of case studies, presentation of theoretical material, etc. An additional ten hours of training is devoted to the observation of mediation sessions and co-mediation with experienced mediators. Discussions are held with the mediator after the session and attempts are made to teach the new mediator the subtleties of the mediation/arbitration process.

Meetings are held every two months for mediators to discuss problems they are experiencing with hearings. Cases are discussed and occassionally panel discussions are held relating to specific issues.

E.2.7 Goal Achievement

The Junior League of Rochester has conducted a study of the Rochester project. The study provides relatively detailed data on a sample of cases and includes types of cases, case outcomes, and characteristics of clients. The American Arbitration Association has recently commissioned an additional study of the project. An independent contractor conducted the study, and the results are being used for internal Association purposes. No additional studies are currently planned. If the project begins to accept Family Court cases, the Project Director has pointed out that an evaluation is likely of this segment of the operation.

The project reports that 1185 (58 percent) of the project's initial 2042 referral cases (i.e., through August 1976) were resolved by dispute hearings. The remaining cases never reached the hearing stage due to the refusal of clients to participate, successful resolution of the case prior to the time of the hearing, and prosecution of the case by the court. The average time from initial referral to the hearing is eleven days, according to *project statistics. Ninety-eight percent* of the cases processed through hearings by the project have not returned to the project with the same problem. The project has not had the resources to monitor resolutions, however. If possible, the project would like to recontact parties to the disputes to determine if the resolutions are being upheld. Currently, only very limited data relevant to this question are available. An attitude survey of a sample of project participants indicated that the overwhelming majority of those sampled were happy with the results of the project hearing. Fewer than 10 percent of the sampled disputants stated that they were dissatisfied.

Data on the demographic characteristics of clients indicate that approximately 65 percent are white, 30 percent are black, and five percent are Hispanic. In the 1975 statistics collected on project participants, slightly over half of complainants were female, while the majority of respondents were male. The majority of both complainants and respondents fell within the 26 to 55 age range.

As noted earlier, the impact of the project upon caseloads in the presecutor's office and the courts is difficult to estimate because it is not clear how far the cases processed by the project would have penetrated into the criminal justice system. The pre-warrant hearing procedure used by the clerk of the court clearly serves to eliminate many cases from the system prior to arrest, and many of the project cases may have been eliminated by this procedure if the project did not intervene. It should be noted that the pre-warrant hearing procedure's "elimination" of cases should not necessarily be equated with the project's "resolution" of cases. Many of the "eliminated" cases may reappear in the courts with new charges in the future if the dispute remains unresolved. The pre-warrant hearing program may not be refunded in the coming year due to the fiscal difficulties being experienced in New York State. If the project is eliminated, the Community Dispute Services project will, of necessity, have a larger impact on the reduction of prosecutor and court caseloads than it does with the pre-warrant hearing project present.

A number of studies of the costs of case processing in the Rochester courts have been conducted recently. The marginal cost of a bench trial for a misdemeanor case was estimated by a recent study to be $657. This same study conducted for the Office of Criminal Justice Planning in Rochester estimated that misdemeanor jury trials have a marginal cost of $1450. The Community Dispute Services project costs approximately $100 per case and is clearly considerably cheaper than either a bench trial or a jury trial. Additional savings can potentially occur in reduced police costs in making repeated calls to the same disputants.

E.2.8 General Observations

The Rochester Community Dispute Services project has been effective in integrating itself into the local criminal justice system. The coordination of the arbitration project with the pre-warrant hearing project provides an interesting combination of state-compelled mediation and voluntary arbitration. The project and the court are currently giving strong consideration to the role and relationships of both the arbitration project and the pre-warrant hearing project, and two different proposals for their coordination have been presented to the county legislature (equivalent to the board of commissioners). The court's plan would involve operation of the pre-warrant hearing project by the district attorney's office and subsequent referral of cases to the arbitration project when they seem appropriate. The Community Dispute Services project, on the other hand, has proposed that it operate the pre-warrant hearing project under contract to the county, and thereby more effectively coordinate the functioning of the two projects.

Future funding of the project is unclear. The project will complete its Law Enforcement Assistance Administration funding during this year and is currently applying to the Department of Housing and Urban Development for funding. City and county funding have been requested, but are considerably unlikely due to fiscal difficulties being experienced in Rochester. Corporation donations, attorney donations, and foundation funding are also being explored. Numerous newspaper articles in Rochester have discussed the plight of the project and have supported its request for funds.

Other similar Arbitration As An Alternative projects sponsored by the American Arbitration Association are located in Cleveland, East Cleveland, Akron, Elyria, Ohio, and San Francisco.

Case Study F:

The San Francisco Community Board Program

F.1.0 Introduction

Currently in the developmental stages, the design for the San Francisco Community Board Program embodies an objective of community participation similar to Boston's Urban Court Program. Once operational, the project will provide citizens--previously excluded from participation in the justice process--with the opportunity and collective responsibility for resolving disputes within the community.

Unlike the Urban Court Program, the San Francisco project will intervene prior to arrest through informal referrals from the police, citizens and school personnel. The Community Boards will be composed of five-person panels drawn from small geographic areas or sub-neighborhoods of San Francisco. The intent of this model is to focus peer or neighborhood pressure on the dispute resolution process, encouraging voluntary compliance with Board recommendations.

Visitacion Valley is the first of four communities that will be selected to develop a Board hearing process. With a population of approximately 22,000, the Visitacion Valley area is considered to be comprised of five major sub-communities, including predominantly black communities, and mixed Anglo and Samoan communities.

F.1.1 Program Development

The concept of a Community Board Program was developed by Raymond Shonholtz, a clinical associate of the law faculty at the University of San Francisco. In January 1976, Shonholtz drafted a position paper describing the foundations for such a program and its application to the caseload of San Francisco's Municipal Court. Two primary arguments were advanced for establishing a non-judicial system for dispute resolution and social service delivery.

(1) The need to narrow the scope of the criminal process through a "front-end" service delivery approach. In the county of San Francisco, Shonholtz found that the majority of municipal criminal court filings are disposed as a result of non-adjudicatory proceedings--dismissals or judicial sentencing to summary or formal probation at arraignment or pre-trial conference. He suggested that the retention of judicial authority in these cases has evolved as a mechanism to enable the court to deliver social services not otherwise available to disadvantaged defendants. Although these services might relate reasonably to the cause of the incident precipitating the referral to court, because they are delivered at the "back-end" or sentencing stage, defendants are retained within the system, judicial authority is prolonged, and probation and diversionary programs proliferate and create a demand to expand judicial authority even further. Shonholtz reasoned that a non-judicial system for minor cases would permit the reallocation of criminal justice resources to more serious crimes and dangerous offenders by serving, in place of the court, as "socializer of last resort." Under the new system, services would be delivered at the front end of the process and not withheld until the completion of cumbersome, expensive, formal court procedures which do not even adjudicate guilt or innocence in most cases.

Recent experience of the project in community organization has suggested that social service availability is very sparse in many target communities. This observation has resulted in the project revising its notions regarding "front end" social service delivery, and the role of activating peer pressure rather than social services to influence citizen problems is currently stressed.

(2) The need to overcome "civic dependence and ignorance" and redirect formal criminal justice resources by involving citizens. Shonholtz also suggested that "the criminal process, as a professionally controlled social service delivery system, has thwarted the development of both active citizen involvement and preventive-oriented social services." To remedy these problems he called for the participation of private citizens and, again, the provision of services without recourse to the punitive aspects of the formal justice process.

In short, the Community Boards (then called Community "No-Fault" Boards) would provide the system with a preventive response to situations that could develop into violations of law, relying on

citizen participation and the delivery of services in lieu of arrest rather than as a condition of probation. Over time, this design was refined to incorporate the notion of peer pressure as a mechanism to encourage people "to come to the Community Board, follow through in the Board process and abide by the Board resolutions."

F.1.1.1 Planning Phase

In early 1976 the Shonholtz paper was distributed to community and law enforcement representatives. Over the next four months, several community meetings were convened and discussions were held with the Chief of Police, members of the Police Commission and the District Attorney. All responded positively to the concept and with the support of two private foundations, formal program design efforts began.

A former criminal justice planner for the Sheriff's Office, a recent law graduate and several consultants were retained to begin the development of model procedures to guide participating communities in the following areas: board member selection and Board interaction; case referral, reporting and sanctioning procedures; and training and community publicity options. By the end of November 1976, several procedures had been developed and the Community Board Program was incorporated as a nonprofit organization under the supervision of a six-member Board of Directors. Moreover, through continued presentations to police officials, the program had received the endorsement of the Police Commission, ensuring the participation of management and line officers.

F.1.1.2 Grant Processing

To date, the Community Board Program has been supported almost entirely by grants from private foundations. Ten foundations (ranging from the Robert F. Kennedy Memorial Fund to the Police Foundation) have awarded a total of $167,500 to support program design and implementation efforts. Three policies have been developed to guide the expenditure of these funds and avoid the divisiveness which might emerge under community pressure to use available monies for functions or jobs ancillary to the Community Board Program:

> "First, no monies will be spent that are not directly and immediately connected to the furtherance of the Community Board concept; second, all expenditures have to be approved by a representative committee working to implement the program in a given area; and third, expenditures follow after the staff and Planning Committee's agreement to a six month budget for the implementation of a Board, reviewable within a three month period."

LEAA has contributed $10,000 to the program through a purchase order to the URSA Institute to assist in developing program procedures and designing an evaluation component. No other government funds have been solicited; and future proposals to maintain the Boards are likely to be submitted to additional private funding sources.

F.1.1.3 Implementation

Beginning in November 1976, program activity has focused on the start-up of one or more Boards. Visitacion Valley was selected as the first target site on the basis of community demographic data collected and analyzed during the design phases as well as an assessment of the criminal justice environment and the receptivity demonstrated by the community in earlier exploratory discussions. Though the selection of a second Board area will not be made until the first program has started, community meetings have been held in Merced, Ingleside, Oceanside area, Northbeach, Bay View/Hunter's Point and Bernal Heights. Based on these discussions, Bernal Heights is likely to become the project's second host site.

In Visitacion Valley, two community role-plays and over a dozen meetings have resulted in the recruitment of a core group of fifteen citizens who will work to organize the program in that area. Discussions have also been held with local employment and youth service agencies to ensure that jobs and related social assistance services will be available to the program's youthful participants.

The staff is currently working with the Community Planning Committee to refine the program design and develop a hiring procedure in

order to place at least one full-time person in the Valley during the start-up phase. Thereafter, program staff hope that by spending the time developing local skills during the start-up phase, Community Boards will be able to operate without a continuing need for a central professional staff.

Shonholtz notes that "moving the Planning Committee through the many issues requiring resolution before a Board can become operative has proved to be the slowest aspect of the project to date." Again, this experience confirms the need for programs choosing a similar model of community involvement to devote substantial resources and leadership during the planning and implementation phases to mobilize and organize participating citizens. At the present time, the program in Visitacion Valley is expected to accept its first referrals in June 1977, eight months after the initial discussions in that community.

F.2.0 Operations

The project presently operates from an office in downtown San Francisco. Eventually branch offices will be established to house each of the Community Boards. These offices will probably be located in informal settings within the neighborhood such as churches, schools, or available community program facilities.

F.2.1 Case Criteria

The precise jurisdiction of the Community Board in each neighborhood has yet to be determined; however, the types of cases that are expected to be heard include domestic situations leading to disturbance charges or battery complaints, petty theft situations, misdemeanor viclations of the Health and Safety Sections (particularly drug violations) and other victimless offenses such as gambling, prostitution and public intoxication. Both juvenile and adult matters will be heard.

If the probability of adjudication or incarceration is high, the Boards will not generally become involved. Shonholtz notes,

however, that since the number of these cases handled by the court is exceedingly small, they can hardly be viewed as a substantial exclusion. In practice, the types of cases which may be considered unsuited to Board participation include recalcitrant misdemeanants, acts of violence not warranting felony disposition, possibly cases involving weapons, and situations where the formal supervision afforded by judicial probation is considered necessary. Although the project does not specifically intend to exclude bad check cases, consumer complaints and small claims cases, referral procedures for these matters have yet to be developed.

F.2.2 Referral Sources

According to the project's original concept paper, persons could be invited to appear before the Board by the staff of the project after receiving informal referrals from the police, school personnel, and the community at large. Parties could also complain to the Board and request that it intervene, or the Board might take the initiative to invite the person to appear in order to provide referral services.

Both participation and acceptance of the Board's recommendations will be voluntary as the Board will have no formal legal status or authority to enforce its decisions. Each Board will have a staff and consulting community facilitator who will conduct preliminary complaint inquiries and make recommendations to the Board regarding the issuance of invitations to appear.

In short, by providing the community with access to the Board process early in the progress of a dispute or potential criminal matter, Shonholtz hopes that the Boards will be viewed by the neighborhood as a "viable middle course between police and prosecutorial intervention and complete citizen inaction."

F.2.3 Resolution Techniques

As currently envisioned, the Board process will vary according to the nature of the case. Although the Board itself will hear most cases, disputes involving a long history of conflict may be referred

by the Board to a lay community mediator with instructions to return to the Board to report on the disposition. In cases which will require programmatic assistance only, Board staff will arrange referrals and once served, the party will return to provide a progress report.

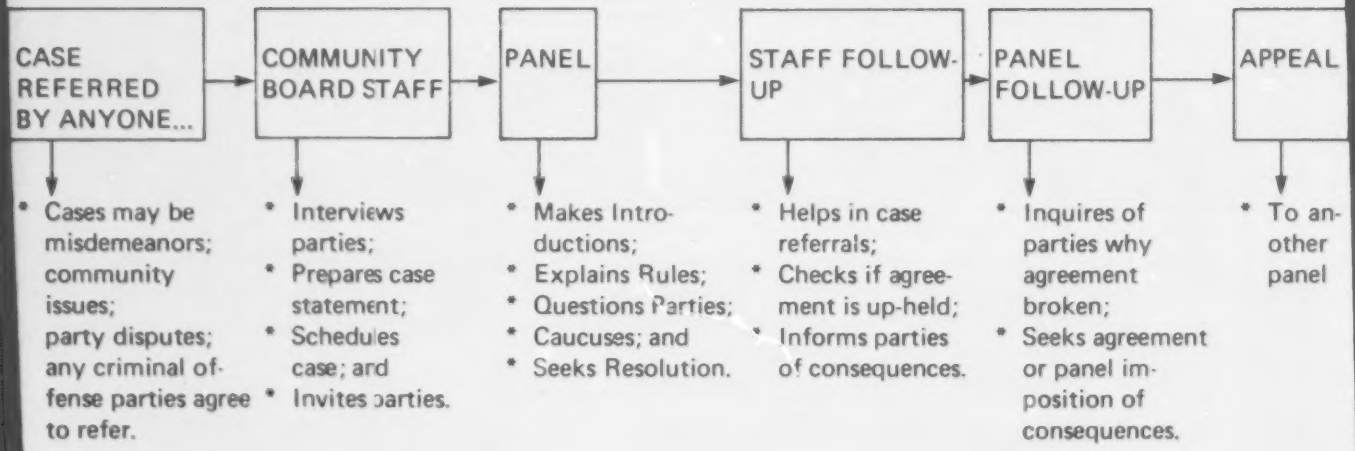
The program model developed by the Visitacion Valley Planning Committee is illustrated in Figure 3.1. Although the exact protocol to be observed during panel hearings has not been fully developed, the goal is to reach a negotiated settlement satisfactory to the community as well as the parties involved. To do so, the Board will emphasize mediation, non-binding arbitration and social service referrals--all reinforced by the pressure afforded the process by the presence of citizens and neighbors on the panels. Although signed agreements will not be used, resolutions will be confirmed in writing and forwarded to the parties after a hearing. An appeal mechanism will be available--most likely in the form of appeal to another panel.

Decisions regarding the attendance of observers and non-participating community members have not been made. However, in cases involving juveniles, parents will be notified and the family must agree to appear voluntarily before the Board. According to present plans, Board staff will investigate failures to comply with Board decisions. The Board will determine the appropriate action at that point, including the possibility of referral to the official justice system.

F.2.4 Hearing Staff Qualifications

The five-member Board Panels will be composed of lay community volunteers trained in mediation techniques and oriented to the services available to participating clients. Selection procedures for the first community area involved the conduct of a large community meeting. Citizens were asked to volunteer to participate in the Community Board project and to nominate individuals to serve in the pool of mediators. All of the citizens will receive training from the project. Although procedures for the selection of panelists have not been fully developed, the project hopes to develop groups representative of the community at large.

Figure 3.1
Visitacion Valley Planning Committee's
Community Board Program Model:


CASE REFERRED BY ANYONE...
COMMUNITY BOARD STAFF
PANEL
STAFF FOLLOW-UP
PANEL FOLLOW-UP
APPEAL
* Cases may be misdemeanors; community issues; party disputes; any criminal offense parties agree to refer.
* Interviews parties;
* Prepares case statement;
* Schedules case; and
* Invites parties.
* Makes Introductions;
* Explains Rules;
* Questions Parties;
* Caucuses; and
* Seeks Resolution.
* Helps in case referrals;
* Checks if agreement is up-held;
* Informs parties of consequences.
* Inquires of parties why agreement broken;
* Seeks agreement or panel imposition of consequences.
* To another panel

The total number of panelists required and the time each will spend will depend on the number of cases available to the Board. A policy has not been developed regarding the provision of wages or stipends to Board members; however, the project is considering the possibility of offering standard juror compensation.

F.2.5 Project Organization

Raymond Shonholtz will direct the project from the central San Francisco office and he is supported by four tull-time and two part-time staff including a Program Manager, an Evaluator, two full-time and one part-time Organizers, and the past Program Manager who is currently working part-time. When boards are established in communities it is anticipated that local outreach office staff will include one Organizer, one Office Manager and a Community Liaison person.

F.2.6 Training

Project plans call for two day training sessions for members of the mediator pool. Participants will receive instruction regarding mediation techniques and engage in role playing and extensive discussions.

F.2.7 Evaluation

During the planning phase, a preliminary evaluation design was developed which includes an assessment of program development and process issues as well as an examination of the Community Board's impact on its clients and community during and after participation. The design suggests three major areas of inquiry in the impact evaluation: attitudinal and behavioral changes among participants; changes in criminal justice indicators such as the reduction in court caseloads; and changes in the attitudes and perceptions of the community.

As the project will have no formal or informal links to the court yet will be involved in resolving potential court matters through the application of peer pressure, there are several questions of immediate interest. These include the project's developing relationship with the prosecution and judiciary, problems encountered in managing the Board's use of its collective responsibilities, and client receptivity to the use of the Board given the possible trade-offs between privacy and peer approval.

F.2.8 General Observations

The Community Board concept is an interesting variant of the citizen-involved neighborhood model that parallels the community justice moots described by Danzig in the Stanford Law Review (1973). Unlike other programs using citizen mediators the project intends to intervene earlier (with no referrals expected from the prosecutor or court) and to rely more heavily on the provision of social service assistance, particularly to its youthful clientele. The emphasis on peer pressure and consequent use of five member Boards is unique as an explicit strategy for ensuring the participation and cooperation of clients with the Board. The advantages and possible disadvantages of this strategy have yet to be determined.

FOOTNOTES

Preface and Chapter 1

1. American Bar Association, Report of the Pound Conference Follow-up Task Force, August 1976, p. 1.

2. Ibid., p. 10.

3. See Gibbs, J. The Kpelle Moot: A therapeutic model for the informal settlement of disputes, 33 Africa, 1 (1963); Gibbs, J. Poro values and courtroom procedures in a Kpelle chiefdom, 18 Swiss Journal of Anthropology 41 (1962); Danzig, R. Toward the creation of a complementary, decentralized system of criminal justice, 26 Stanford Law Review 1 (1973); and Smith, D. Man and law in urban Africa: a role for customary courts in the urbanization process, 20 American Journal of Comparative Law 223 (1972).

4. See Sarat, A., and Grossman, J. Courts and conflict resolution: problems in the mobilization of adjudication, 69 American Political Science Review 1200 (1975) for an interesting comparative discussion of dispute resolution mechanisms.

5. The discussion of table one suggests additional mechanisms including inaction, self-help, conciliation, etc.

6. Johnson, E., Kantor, V., and Schwartz, E. Outside the Courts: A Survey of Diversion Alternatives in Civil Cases. Denver: National Center for State Courts, 1977, p. 1. The Johnson et al. estimate is based upon an extrapolation from data on California civil litigation rates to nationwide rates.

7. Sarat and Grossman (note 4), p. 1208.

8. See President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, Washington, D.C., U.S. Government Printing Office, 1967 for an interesting discussion of criminal court case processing.

9. See Cohen, J. Chinese mediation on the eve of modernization, 54 California Law Review 1201 (1966); and Lubman, S. Mao and mediation: politics and dispute resolution in Communist China, 55 California Law Review 1284 (1967) for excellent overviews of Chinese mediation mechanisms. Soviet mechanisms differ

significantly from Chinese models; see Berman, H. The educational role of the Soviet court, 21 International and Comparative Law Quarterly 8 (1972) for an overview.

10. See Felstiner, L., and Drew, A. European Alternatives to Criminal Trials and Their Applicability in the United States (University of Southern California, unpublished mimeograph, 1976) for an interesting discussion of a variety of European dispute processing mechanisms.

11. Johnson, et al. (note 6) p. 2. Data were collected as part of the Calendar Status Study by the Institute of Judicial Administration.

12. Lon Fuller has argued very persuasively that many cases are simply not suited to the decision making style of adjudication. Adjudication is best suited for issues which can be resolved by a yes-no or more-less decision. Many conflicts do not conveniently array themselves on such dimensions but are rather "polycentric," i.e., many centered. For example, a long standing dispute between two neighbors might involve a very large number of real and imagined offenses committed by both parties. A current offense can only be understood in light of the prior relationships of the disputants, and forms of dispute processing such as mediation and arbitration lend themselves to the exploration of these relationships and the development of a settlement which takes the reciprocal nature of the dispute into account. See Fuller, L. Collective bargaining and the arbitrator, 23 Wisconsin Law Review 3 (1963); Fuller, L. The Forms and Limits of Adjudication (Harvard Law School, unpublished mimeograph, undated); and Fuller, L. Mediation: its forms and functions, 44 Southern California Law Review 312 (1971).

13. Vera Institute of Justice, Felony Arrests: Their Prosecution and Disposition in New York City's Courts. New York: Vera Institute of Justice, 1977, p. xv.

14. Ibid., p. 19.

15. Burger, W. Agenda for 2000 AD - a need for systematic anticipation, 70 Federal Rules Decisions 83 (1976), p. 92.

16. See Koch, K., Sodergren, J., and Campbell, S. Political and psychological correlates of conflict management: a cross cultural study, 10 Law and Society Review 443 (1976) for an

interesting comparison of fifty societies in terms of their modes of conflict resolution.

17. The term "dyadic" generally denotes two person interactions but is intended here to encompass two "party" interactions. Several persons can serve as one party to a dispute as in the case of a husband and wife engaged in a dispute with a neighbor.

18. Galanter, M. Why the "haves" come out ahead: speculations on the limits of legal change, 9 Law and Society Review 95 (1974), p. 125.

19. Felstiner, W. Influences of social organization on dispute processing, 9 Law and Society Review 63 (1974), p. 76. The term "multiplex" was derived from Gluckman's research; see Gluckman, M. The Judicial Process Among the Barotse of Northern Rhodesia, Manchester: The University Press, 1955. See Danzig, R., and Lowy, M. Everyday disputes and mediation in the United States: a reply to Professor Felstiner, 9 Law and Society Review 675 (1975) and Felstiner, W. Avoidance as dispute processing: an elaboration, 9 Law and Society Review 695 (1975) for differing views on the value of dispute avoidance.

20. Koch, et al. (note 16), p. 443.

21. Galanter (note 18), p. 128.

22. Ibid., p. 128.

23. The Fairfax County Business/Consumer Code of Ethics can be obtained from the Fairfax County Department of Consumer Affairs or the Fairfax County Chamber of Commerce.

24. See McGillis, D., Mullen, J., and Studen, L. Controlled Confrontation: the Ward Grievance Procedure of the California Youth Authority, National Institute of Law Enforcement and Criminal Justice, Washington, D.C.: U.S. Government Printing Office, 1976; and Keating, M. Arbitration of inmate grievances, 20 The Arbitration Journal 177 (1975).

25. See Judicial Council of California, A Study of the Role of Arbitration in the Judicial Process (1973) for a detailed discussion of contractually based arbitration mechanisms.

26. The Judicial Council of California study (note 25) provides an excellent overview of the uses of arbitration in the United States and includes sections on each of the topics noted in the text. Stulberg, J. A civil alternative to criminal prosecution, 39 Albany Law Review 359 (1975) provides an interesting discussion of the application of arbitration to citizen disputes in Rochester, New York.

27. The Newspaper Publishers and Editors Yearbook lists current action-line projects throughout the United States.

28. Johnson, et al. (note 6), p. 75.

29. Ibid., p. 73.

30. See Zehnle, R., and Zuehl, J. Background Research Report for the ABA Special Committee on Resolution of Minor Disputes (unpublished mimeograph, 1976) for a discussion of the MACAP program. The Zehnle and Zuehl report was prepared under the auspices of the American Bar Foundation and provides a very useful annotated bibliography, inventory of innovative programs, and discussion of potential reforms in dispute processing.

31. Johnson, et al. (note 6), p. 58.

32. See Frank, State ombudsman legislation in the United States, 29 University of Miami Law Review 397 (1975).

33. Johnson, et al. (note 6, pp. 58-62) provides a useful discussion of state ombudsman projects.

34. See Johnson et al. (note 6), p. 63. Some general mediation and arbitration projects provide local fact-finding services for disputes between individuals by having a staff member directly investigate the merits of a dispute (e.g., the loudness of a lawnmower). These projects do not generally serve as ombudsmen in disputes between individuals and institutions, although some agency referral activities include advocacy characteristic of an ombudsman.

35. See McGillis, D., and Wise, L. Court Planning and Research: the Los Angeles Experience, National Institute of Law Enforcement and Criminal Justice, Washington, D.C.: U.S. Government Printing Office, 1976 for further information regarding the Los Angeles administrative procedures and

other Los Angeles reforms. The Law Enforcement Assistance Administration has designated the Administrative Adjudication Bureau of the New York State Department of Motor Vehicles to be an Exemplary Project for its accomplishments in improving the handling of motor vehicle offenses.

36. See Johnson, et al. (note 6), p. 12.

37. Ibid., pp. 25-30.

38. See Judicial Council of California study (note 25) for a discussion of arbitration appeal mechanisms.

39. Fuller (1963) (note 12), p. 28.

40. Many thoughtful papers have been written on the need for new forums for dispute resolution in addition to the sample of papers discussed in this section. For example, see Nader, L., and Singer, L. Dispute resolution, 51 California State Bar Journal 281 (1976); Rosenberg, M. Devising procedures that are civil to promote justice that is civilized, 69 Michigan Law Review 797 (1971); and Hufstedler, S. New blocks for old pyramids: reshaping the justice system, 44 Southern California Law Review 901 (1971). American University researchers have conducted an intensive study of alternatives to the courts and have prepared an interesting report titled The New Justice-Alternatives to Conventional Criminal Adjudication (1975), authored by David Aaronson, Bert Hoff, Peter Jaszi, Nicholas Kittrie, and David Saari. Raymond Schonholtz director of the San Francisco Community Board Program has developed an interesting mimeographed summary of alternative dispute processing mechanisms including an evaluation of current plans in the area. Mary Ann Beck has prepared an information summary of LEAA efforts in this area titled Alternative Approaches to Dispute Resolution.

41. Danzig (note 3), p. 42.

42. Ibid., p. 43.

43. Report of the Pound Follow-up Task Force (note 1), p. 1.

44. Ibid., p. 11.

45. The views of Chief Justice Burger are presented in his address to the Pound Conference (cited above, note 15).

Attorney General Bell chaired the Pound Conference Follow-up Task Force which developed the proposal for Neighborhood Justice Centers discussed in the text. The American Bar Association Committee on Minor Dispute Resolution has sponsored a conference dealing primarily with Neighborhood Justice Centers and small claims courts, collected detailed information on alternatives to the courts, and will publish a report on its work in the near future. The American Arbitration Association and the Institute for Mediation and Conflict Resolution have both sponsored projects which are similar to Neighborhood Justice Centers (case studies are presented in Chapter 3). The press has written very favorable articles about the various projects currently in operation. A typical story appeared in the August 22, 1977 New York Times in regard to the Brookhaven, Long Island project and material from that article is quoted in Section 1.7.3 of this report.

46. Kilpatrick, J. Article on Chief Justice Burger. Boston Globe, June 1977.

47. Peterson, I. Article on the Brookhaven, Long Island Community Mediation Center, New York Times, August 22, 1977.

48. Editorial. Boston Globe, September 25, 1977, p. A6.

49. Article on the Office of Economic Opportunity, Time Magazine, May 13, 1966, p. 25.

50. See evaluative studies of OEO programs in Zurcher, L., and Bonjean, C. Planned Social Intervention: An Interdisciplinary Anthology. Scranton: Chandler Publishing Co., 1970; and Pilisuk, M., and Pilisuk, P. How We Lost The War on Poverty, New Brunswik: Transaction Books, 1973.

51. Nejelski, P. The Federal Role in Minor Dispute Resolution, (U.S. Department of Justice mimeo of an address to the National Conference on Minor Dispute Resolution, May 26, 1977), p. 20.

52. Sander, F. Varieties of dispute processing, 70 Federal Rules Decisions 111 (1976), p. 124.

Chapter 2

1. In addition to sponsorship by the police, prosecutor, and the courts, projects can also be sponsored by other public agencies. For example, the newly developing Neighborhood Justice Center project in Kansas City, Missouri will be sponsored by the City Manager's Office and will function as a division of the City's Community Services Department. Sponsorship by a city government department can have the advantage of lending the project an air of authority without attaching the potential stigma of criminal justice agency processing. In Kansas City, however, the Community Services Department provides probation and parole services and is likely to be viewed at least partly as a criminal justice agency.

2. A number of police departments have developed Family Crisis Intervention Units which train selected officers in mediation skills, intervention techniques, and provide them with detailed information on appropriate referral sources for troubled citizens. Bard, M., and Zacker, J. The Police and Interpersonal Conflict: Third-Party Intervention Approaches, Washington, D.C.: The Police Foundation, 1976 provides a very interesting case study of the operation of the Norwalk, Connecticut Department of Police Services crisis intervention project. The Miami experience with the cooperative relationship of the local crisis intervention unit and the Miami Citizen Dispute Settlement Center suggests that the combination of the two services might be extremely useful to both types of projects.

3. Sander, F. Varieties of dispute processing, 70 Federal Rules Decisions 111 (1976), p. 120.

4. Johnson, E., Kantor, V., and Schwartz, E. Outside the Courts: A Survey of Diversion Alternatives in Civil Cases, Denver: National Center for the State Courts, 1977. See Sarat, A. Alternatives in dispute processing: litigation in a small claims court, 10 Law and Society Review 339 (1976) for the study of the New York Small Claims Court on which the Johnson quote is based. The Sarat study provides a wealth of data regarding the determinants of small claims court case processing and can serve as a model for future studies of Neighborhood Justice Centers.

5. Danzig, R. Toward the creation of a complementary, decentralized system of criminal justice, 26 Stanford Law Review 1 (1973), p. 54.

6. Sander (note 3), p. 124. See Yngvesson, B., and Hennessey, P. Small claims, complex disputes: a review of the small claims literature, 9 Law and Society Review 219 (1975) for an interesting discussion of small claims research.

7. Ibid., p. 123.

8. Johnson, et al., p. 92.

9. Sander (note 3), p. 113.

10. Ibid., p. 122.

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APPENDIX A

CITIZEN DISPUTE SETTLEMENT PROJECT SURVEY

CITIZEN DISPUTE SETTLEMENT PROJECT SURVEY

1. Overview

   1. Size and type of community

   2. Brief overview of the program (who operates, since when, where, how are cases processed, what cases are processed)

2. Project Start-Up

   1. Who originally developed the idea for the Project:

   2. Was a needs assessment conducted?

   3. What projects were used as models?

   4. What was the initial funding source, budget, staff size?

   5. Who supported the project from the start?

   6. Were innovative projects common in the jurisdiction?

   7. Which people or groups were resistant to the project?

      a) Why?

      b) How was the resistance overcome? What arguments were used?

   8. How long did the start-up period take?

      a) Planning phase - from concept to application preparation (is a copy of the original grant application available?)

      b) Grant processing phase - from application to award

      c) Early implementation phase - staff hiring and beginning project operations

9. What problems were encountered during the various phases?

   a) How were the problems overcome - any lessons learned?

10. How many cases were handled during the first year?

11. What was the cost per case during the first year and what range of costs would be reasonable to expect for new projects elsewhere?

12. How was the availability of the project advertised to the local criminal justice agencies and citizens?

13. Where is the project located? How and why was the location selected?

14. Does the project have branch offices?

3. Operations

Case Criteria

1. interpersonal disputes (A&B's, petty larceny, etc.)

   (if these disputes are included, are only ongoing relationships considered acceptable? Should the relationships involve relatively equal positions of power?)

2. bad checks

3. city regulations (landlord/tenant, dogs, sanitation, etc.)

4. shoplifting

5. consumer complaints

6. small monetary matters (e.g. less than $1500)

   (if these cases are not taken, why not? would it be difficult for a project to include small claims type cases)

What rationale was used in the development of case criteria?

Are data available on the number of each type of case processed per year (including specific dispute types and other subcategories)?

Has the distribution over the various types of cases changed during the course of the project? How?

Are the different types of cases processed with different types of procedures?

Are the cases which are processed considered to be diverted from the criminal justice system or to be matters which traditionally would have never entered the system?

Referral Sources

1. walk-ins
2. police (special unit?)
3. prosecutor (special unit?)
4. court (what stage - arraignment, prelim hearing, trial?)
5. community organizations (which ones?)
6. other (e.g., arrangement with dept. stores ala Columbus)

What type of screening is conducted at intake?

Are different intake processes used for different types of cases?

Is a determination of "prosecutability" made at intake?

Are parties to the case demanded to appear or must the parties mutually agree to have their case processed by the CDS?

Resolution Techniques

1. mediation
2. arbitration (binding - nonbinding)

3. combination of mediation and arbitration

4. referral to social agencies

5. is prosecutor probation or its equivalent available?

6. other

Are any provisions made to insure due process? Have any problems occurred with regard to due process?

What is the typical protocol at a session? Is the complainant allowed to speak first?

How much time is scheduled per hearing? How long does the typical hearing last? Are hearings allowed to continue until the parties want to stop?

Are repeat hearings possible in complex cases?

Are written resolutions used? Is a great deal of importance attached to achieving a written resolution?

Hearing Staff Qualifications

1. law students

2. lawyers

3. professional mediators

4. laymen

Are mediation staff paid or volunteers?

Are mediation staff full time or part-time?

How are mediation staff recruited?

Follow-up Procedures

are any appeal mechanisms available?

what procedures are followed if the mediation session was not successful in resolving the problem?

does the project contact clients to determine if resolutions are remaining in force?

in unsuccessful cases does the project prepare materials for the prosecutor's office

have project personnel ever testified at a court case which had previously been processed by the project?

4. Project Organization

1. How many administrative personnel are there? What are their titles and training?

2. How many intake/screening personnel are there? What are their titles and training?

3. How many mediation personnel are there? What are their titles and training?

4. What additional personnel are on the staff (social agency referral staff, security staff, etc.?)

5. Is an organization chart available noting the relationships among the various types of staff and the relationships of the project to other agencies?

6. Has there been much staff turnover?

Staff Training

What training is required for the various positions?

Is orientation training provided for staff? What techniques are used (e.g., role playing, case study, observation, co-mediation, videotape, lectures, etc.)

Is inservice training provided?

Are periodic staff meetings held to discuss problems?

Are written training materials available?

Costs

Is a budget available noting costs by category?

How has funding varied over time?

What funding sources have been used and what have been their relative contributions?

What are the prospects for future funding?

What is the cost per case?

Are data available on the costs required to normally process a case through the various stages of the system from initial screening through various hearings and trials?

Are data available on the costs to the project of collecting monitoring data on caseflow and operations? Would these data be useful to an evaluator in their present form?

Evaluation

What type of evaluation/monitoring is currently being conducted? Are detailed data collection forms used for each case?

Are past evaluations available? Are future evaluations planned?

What are the project's current achievements?

percentage of cases successfully resolved (including definition of success)

case processing time

recidivism (i.e., return of cases to the project or courts within a specified period of time)

demographic characteristics of clients

attitudes of clients toward the project

degree of use of social referral

reductions in court or prosecutor caseloads attributable to the project

reduced tension in the community (utopian)

5. General observations

1. What does the project consider to be its major strengths?

2. What does the project consider to be its major weaknesses?

3. What are the project's prospects for institutionalization in the local budget?

4. Does the project director have strong opinions regarding acceptable and unacceptable features of a prototype model for citizen dispute settlement projects?

APPENDIX B

PROPOSED
NATIONAL INSTITUTE OF LAW ENFORCEMENT
AND CRIMINAL JUSTICE
DESIGN FOR
NEIGHBORHOOD JUSTICE CENTERS

PROPOSED NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE DESIGN FOR NEIGHBORHOOD JUSTICE CENTERS

The recommended elements of a NJC discussed below were derived from a National Institute analysis of the experiences of similar existing programs. Ten key aspects of program operation are identified and discussed briefly. Where experience dictates and evaluation requirements permit, several possible options are listed. Where the options available to the sites must be more restricted that is also noted.

1. Objectives

An adequate evaluation of program success requires that goals be clearly stated and understood by all participants. Although each program would develop its own comprehensive list of program objectives, it is recommended that the overall goals include the following:

A. To establish in the community an efficient mechanism for the resolution of minor criminal and civil disputes which stresses mediation and conciliation between the parties in contrast to the findings of fault or guilt which characterizes the traditional adjudication process.

B. To reduce court caseload by redirecting cases that are not appropriate for the adversarial process.

C. To enable the parties involved in the disputes to arrive at fair and lasting solutions.

D. To serve as a source of information and referral for disputes that would be more appropriately handled by other community services or government agencies.

2. Community Served

The population served should consist of between 50,000 and 200,000 people within a larger metropolitan area. The

neighborhood served should be an identifiable segment of the city that is heterogeneous and does not represent extremes of wealth or poverty. Support from key local criminal justice and governmental officials, judges and leaders of relevant service agencies is essential to the success of a program.

3. Sponsoring Agency

The sponsor of the NJC may be either a public agency (police, prosecutor, court, mayor's office, etc.) or a private non-profit organization. The sponsoring agency should have had prior experience in the fiscal management of government grants. Regardless of the nature of the sponsoring agency, a policy and steering board for the project should be established. It should be broadly representative of the community and should include, in addition to lay citizens and leaders of community organizations who reside in the neighborhood, representatives of local criminal justice and civil justice agencies and representatives of the sponsoring agency.

4. Location

The project should be clearly identified as separate from the formal court system but it should be located in a place accessible to the public agencies which will refer people to it and to the constituent community.

5. Case Criteria

A broad range of disputes between individuals with an ongoing relationship (e.g., family, neighbors, owner-tenants) would be eligible for the services of the NJC. Consumer complaints would be confined to those involving individuals or an individual and a small local merchant rather than a large institution. Identification of the specific types of civil or criminal cases to be referred to the center in any particular site would be determined by the project sponsors in conjunction with other relevant public agencies and community representatives. The key criterion to be used by the sites in making these determinations is the suitability of cases for settlement through mediation.

6. Referral Sources

A. Cases should be accepted from the following referral sources:

1. Courts
2. Prosecution
3. Police Agencies
4. Other public or private agencies
5. Self-referrals

B. Since the center will seek to establish itself as an alternative to existing formal processes, it should actively publicize its services in the community.

7. Intake

Intake procedures should be structured to include the following:

A. Written screening criteria which would include sufficient data collection to allow follow-up of clients who fail to appear for hearings and the reasons therefor.

B. A briefing process to assure that disputants understand the voluntary nature of the process. The only coercion used to induce the appearance of the respondent should be the threat inherent in an explanation of the complainant's rights to pursue more formal processes.

C. The possible use of signed agreements as symbols of the disputants' willingness to participate in the dispute resolution process.

8. Resolution Techniques

The range of options for dispute settlement may include conciliation, mediation and arbitration. All dispute settlements should be reduced to writing. Signatures of both parties should be encouraged. Arbitration should only be used if conciliation and mediation are unsuccessful. In the event arbitration is required, an option may be to use different individuals to perform the roles of mediator and arbitrator in a given dispute and to use a separate hearing for the arbitration.

Projects should provide referrals to social service agencies to assist in the resolution of ongoing problems. Where possible, cases should be referred to an ombudsman or fact finder when appropriate.

9. Staffing

A. Mediation/Arbitration Panels

There should be a broad pool of trained mediators available to serve from time to time at dispute resolution hearings. Preference is for mature individuals flexible enough to deal with the complexities of interpersonal conflict. Clearly, in a model which seeks neighborhood justice, a primary source of candidates would be the community itself.

The start-up may require the use of professional mediators or others with dispute resolution skills. However, the ultimate goal is to train members of the lay community to perform these services.

B. Project Administrative Staff

The full-time staff of the project should include persons with knowledge of the legal system and the social service support systems that operate in the jurisdiction.

C. Training

All project staff and mediators should receive the program's entire training in methods of dispute resolution. Training programs should consist of a minimum of 40 hours. Generally new mediators would be required to serve an apprenticeship period after training.

10. Case Follow-up and Evaluation

Compliance with the terms of the agreement should be verified by the project staff. The projects should maintain a written record of all cases, whether or not settlement is achieved. All case referrals not resulting in a successful settlement should be examined to determine reasons for nonparticipation or unsuccessful resolution.

All projects will be required to cooperate with the evaluation of the three projects sponsored by the National Institute. Data collection instruments must be compatible with the information needs of the national evaluation.

APPENDIX C

ADDRESSES OF THE SIX SELECTED DISPUTE PROCESSING PROJECTS

A. The Boston Urban Court Program

Ms. Lois Gehrman
Boston Urban Court Program
560A Washington Street
Dorchester, Massachusetts 02124

B. The Columbus Night Prosecutor Program

Mr. Lawrence Ray
Night Prosecutor Program
City Hall Annex Building
67 N. Front Street, Room 400
Columbus, Ohio 43215

C. The Miami Citizen Dispute Settlement Program

Ms. Linda Hope
Citizen Dispute Settlement Program
1351 N.W. 12th Street
Miami, Florida 33125

D. The New York Institute for Mediation and Conflict Resolution Dispute Center

Ms. Ann Weisbrod
IMCR Dispute Center
425 W. 144th Street
New York, New York 10031

E. The Rochester American Arbitration Association Community Dispute Services Project

Mr. Theodore Kantor
Community Dispute Service Project
36 W. Main Street, Suite 410
Rochester, NY 14614

F. The San Francisco Community Board Program

Mr. Raymond Shonholtz
Community Board Program
149 Ninth Street
San Francisco, California 94103

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NEIGHBORHOOD JUSTICE CENTERS
An Analysis of Potential Models

To help LEAA better evaluate the usefulness of this document, the reader is requested to answer and return the following questions.

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